

OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 23

RAPHAEL KÖNIGSBERG, PETITIONER,

STATE BAR OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED JANUARY 26, 1960
CERTIORARI GRANTED MARCH 7, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 28

RAPHAEL KONIGSBERG, PETITIONER,

vs.

STATE BAR OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

INDEX

Original Print

Proceedings in the Supreme Court of the State of California

Application of petitioner for admission to the practice of law

1 1

Authorities in support of motion

3 2

Order vacating decision filed April 20, 1955 and referring matter to Committee of Bar Examiners etc.

4 2

Proceedings before the Committee of Bar Examiners of the State Bar of California

8 3

Transcript of hearing of September 21, 1957

8 3

Appearances

8 3

Statement by Mr. Mosk

10 5

Testimony of Herbert D. Tobin—

direct 20 11

Raphael Konigsberg—

direct 26 14

	Original	Print
Proceedings before the Committee of Bar Examiners of the State Bar of California—Continued		
Reporter's certificate (omitted in printing)	65	39
Exhibit H	66	39
Letter from Associated Machinecraft Co. (Lorris Gosman) to Committee of Bar Examiners, dated February 17, 1957	66	39
Letter from J. Marx Ayres to Committee of Bar Examiners, dated September 18, 1957	67	40
Letter from The Boroughs and Associates (Reuben W. Borough) to Committee on Bar Examiners, dated September 18, 1957	68	41
Letter from Allan M. Carson to Committee of Bar Examiners	69	42
Letter from A. W. Moore & Co., to Committee of Bar Examiners, dated September 17, 1957	70	43
Letter from Robert Kennard to Committee of Bar Examiners, dated September 18, 1957	71	44
Letter from Richard H. Oshman to Committee of Bar Examiners, dated September 18, 1957	72	45
Letter from Elaine B. Fischel to Committee of Bar Examiners, dated September 17, 1957	73	46
Letter from Joseph Goorwitch to Committee of Bar Examiners, dated September 17, 1957	74	47
Letter from Harold Koppelman to Committee of Bar Examiners, dated September 17, 1957	75	48
Letter from Rubins, Rosman & Borak to Committee of Bar Examiners, dated September 17, 1957	76	49
Letter from Seymour A. Myerson to Committee of Bar Examiners, dated September 18, 1957	77	50
Proceedings in the Supreme Court of the State of California	78	51
Order granting review in state bar proceeding filed September 3, 1958	78	51
Order of January 14, 1959 continuing the matter for oral argument	79	51
Opinion, The Court	80	52
Dissenting opinion, Traynor, J.	85	58
Dissenting opinion, Peters, J.	89	62

INDEX

iii

Order denying rehearing	97	71
Clerk's certificate (omitted in printing)	97a	71
Order granting motion to use the record in No. 5, October Term, 1956 in this case	98	72
Order allowing certiorari	99	72
Report of the Committee of Bar Examiners	73	73



[fol. A] [File endorsement omitted]
[fol. 1]

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

LA Number 23266

RAPHAEL KONIGSBERG, Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR
EXAMINERS OF THE STATE BAR OF CALIFORNIA, Respondents.

APPLICATION OF PETITIONER FOR ADMISSION TO THE PRACTICE
OF LAW—Filed June 26, 1957.

To the Honorable Justices of the Supreme Court of the
State of California:

The Supreme Court of the United States having returned
the mandate to this Honorable Court in the matter of
Konigsberg v. State Bar of California, et al., 353 U.S. 252,
petitioner Raphael Konigsberg hereby moves that this Hon-
orable Court admit him to the practice of law as a member
of the State Bar of California.

Petitioner is informed and believes that this Honorable
Court has no formal session scheduled in the city of Los
Angeles prior to the month of October, 1957, nor in the
[fol. 2] city of San Francisco prior to the month of Sep-
tember, 1957. It is respectfully requested therefore that
petitioner be allowed to appear for formal admission to the
practice of law at some convenient early summer meeting
of this Court in either Los Angeles or San Francisco.

Dated: June 24, 1957.

Respectfully submitted,

Edward Mosk, Attorney for Petitioner.

[fol. 3]

AUTHORITIES IN SUPPORT OF MOTION

Königsberg v. State Bar of California, 353 U.S. 252, (Re-hearing denied 6/17/57);

Schware v. Board of Governors, etc., 353 U.S. 232;

In re Patterson, United States Supreme Court, (decided May 13, 1957);

Brydonjack v. State Bar, 208 Cal. 439, 281 P. 1018;

Ex Parte McCue, 211 Cal. 57, 293 P. 47;

Rule 41, *Rules, Supreme Court of California*.

[fol. 3a] Affidavit of Service by Mail (omitted in printing).

[fol. 4] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

L.A. No. 23266

RAPHAEL KÖNIGSBERG

v.

THE STATE BAR OF CALIFORNIA

ORDER VACATING DECISION FILED APRIL 20, 1955 AND REFERRING MATTER TO COMMITTEE OF BAR EXAMINERS, ETC.
—Filed July 10, 1957

Pursuant to mandate of the Supreme Court of the United States, it is ordered that the decision of this Court, filed April 20, 1955, be vacated, and the matter of admitting Raphael Konigsberg to the practice of law in all the courts of this State is referred to the Committee of Bar Examiners for further proceedings.

Carter, J. is of the opinion that the application of Raphael Konigsberg for admission to practice law in all of the courts of this state should now be granted.

Gibson, Chief Justice.

[fol. 5] [File endorsement omitted]

Filed Nov. 19, 1957

William L. Sullivan, Clerk, By R. J. Bell, L. A.
Deputy.

[fol. 8]

BEFORE THE COMMITTEE OF BAR EXAMINERS
OF THE STATE BAR OF CALIFORNIA

In the Matter of
RAPHAEL KONIGSBERG

Application for Admission to Practice Law in California

Transcript of Hearing—September 21, 1957

APPEARANCES:

Sharp Whitmore, Esq., Chairman

Vincent H. O'Donnell, Esq., Vice-Chairman

George Harnagel, Jr., Esq., Member

Forrest E. Macomber, Esq., Member

William M. Maxfield, Esq., Member

Thomas H. McGovern, Esq., Member

John B. Surr, Esq., Member

Goscoe O. Farley, Esq., Secretary

Jack A. Pollatsek, Esq., Legal Assistant

William Tucker, Esq., Examiner for Bar Examiners

Raphael Konigsberg, Applicant

Edward Mosk, Esq., Attorney for Applicant

Marion Farrell, C.S.R., Reporter

Chairman Sharp Whitmore: I think the two of you have met most of the members of the Committee, perhaps not all. At the far end of the table is Mr. Tucker, who will be the Committee's Examiner in this case. Next is Mr. Surr, a member of the Committee. Mr. McGovern, whom I think you met before. Mr. Maxfield. On my right, Mr. O'Donnell. My name is Whitmore whom you met, I think. On my left [fol. 9] is Mr. Farley whom I believe you know. Mr. Harnagel from Los Angeles is a member of the Committee. He is new to the Committee since you were last before us, Mr. Konigsberg. On his left is Mr. Macomber from Stockton who I think too is a new one. On his left is Mr. Pollatsek who is the Legal Assistant to the Committee. Mr. Konigsberg and Mr. Mosk.

Now, Mr. Mosk, because of the passage of time since the last appearance by you and Mr. Konigsberg before the Committee there have been as I have just indicated some changes in the composition of the Committee. Mr. Macomber, Mr. Surr and Mr. Harnagel have not participated in any of the hearings during which you and Mr. Konigsberg have been present. I am going to propose that in order that we not have to duplicate subject matter previously covered in other hearings that if it is agreeable to you we should like to consider the transcripts and exhibits of the previous Committee and Subcommittee hearings as part of the record here, and if it is agreeable to you to have Mr. Macomber, Mr. Surr and Mr. Harnagel participate with the rest of the Committee in connection with any determination their participation to be based on this hearing today and reading and study of the previous transcripts and exhibits.

Mr. Stanley Mosk: We have no objection to that procedure, Mr. Chairman.

[fol. 10] Chairman Whitmore: I have generally outlined to Mr. Mosk the scope of the proposed hearing today. I should like to point out to Mr. Konigsberg, as well as to Mr. Mosk, that the functions of the Committee of Bar Examiners are really two-fold: First to investigate in connection with the requirements for admission to practice set forth in the Business and Professions Code; and second to make determinations. As a result of our two-fold pur-

pose, particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission. If you have questions we shall certainly be happy to have your counsel or you address them to us. We should certainly make every effort to limit our questions to those which are material ones.

I don't know, Mr. Mosk, how you would prefer to proceed. Would you prefer to have us ask what questions we feel we have of Mr. Konigsberg, or is there something you would prefer to go into prior to that?

STATEMENT BY MR. MOSK

Mr. Mosk: If I might, your Honor, Mr. Chairman I believe would be proper terminology, I would want to make a formal motion with a few remarks to precede that motion if I may. I, of course, did speak with the Chairman on the [fol. 11] phone earlier in the week so that I am not unfamiliar with the procedure that you plan to follow. It is our position, however, that no such proceedings are required at this time; that we have a decision by the United States Supreme Court in Konigsberg versus State Bar, and that that decision, together with the decision in the Schware case, decided the same day as the Konigsberg decision, and the series of other decisions which the court handed down in the present term, the term just passed, make it both unnecessary and we would say a denial of due process to proceed to have any further proceedings other than a decision by this Committee to recommend his admission to the Bar.

It would be our position that under the mandate of the Konigsberg case in which the court indicated that the State of California, the State Bar, should take action not inconsistent with the decision in the Konigsberg case; that the only action which could be taken which is not inconsistent with that decision would be an order for his admission.

I am sure that every member of this Committee has thoroughly read the decision, perhaps even more times than I have, but I would like to point out some of the factors in the decision which seem to me to militate against any action other than a straight order for his admission.

[fol. 12] I would point out that the several comments by the court in the decision—certainly the very concluding one—seems to be almost determinative of the case as we see it. The court in the Konigsberg case said: "In this case we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forcible overthrow of the government." Now, with this positive finding on the part of the Supreme Court, and their follow-up statement, which is then that the action should be taken not inconsistent with their finding, it is our position that the court has in effect said and that the mandate of the court is that the State of California should admit Mr. Konigsberg as a lawyer to the Bar of California.

However, there is additional language, and it seems to us at least that all of the conclusions which the court has reached, both in the Konigsberg decision and in the Schware decision, which is certainly a companion case and deals with closely related facts, would militate against any action or any questions, and we, I think, at this point concede with the possible exception of some positive evidence of wrong-doing perhaps since the last hearing; if there were such evidence, perhaps that might become a [fol. 13] basis for denying him admission, but certainly on the basis of this record and the good moral character shown we would submit there is no action to be taken.

Now, one of the points that was certainly raised at the earlier proceedings and certainly all the way through the court proceedings, as this case worked its way up to the United States Supreme Court, was this whole question of privilege against right so far as the admission to the Bar. Now, it seems to us that this issue has been firmly laid to rest for once and for all, and that without regard to whether we use the terminology of privilege or right so far as becoming a lawyer is concerned. In both the Konigsberg case and the Schware case it clearly indicated that arbitrary action, whether it is a privilege or a right, arbitrary action on the part of the State Bar would be a denial of due process and therefore a denial of the rights of petitioner and would have to be overturned by

the courts. And this was true in both Konigsberg and in Schware.

The court in Konigsberg, you will recall, points out that, "The question is whether on the whole record a reasonable man could fairly find that there were substantial doubts about Konigsberg's honesty, fairness in and respect for the rights of others and the laws of the State or nation." And the court on the basis of the whole record concluded that there could be no reasonable doubt.

[fol. 14] There again we submit there is no basis for further proceedings, because the mandate of the court was to take action not inconsistent with its decision, and they have resolved on the facts of the case the question as to whether there could be reasonable doubt, and they have resolved it in favor of Mr. Konigsberg.

Now, the areas which you have indicated that certain questions might be asked which if not answered would obstruct the work of the Committee in its investigating function, here again the decision has, I think, resolved the area of right on the part of the Committee to proceed. The decision very clearly indicated that the key to the question here is not whether he has failed to answer a specific question, but in a sense the key is whether even if the question were answered one way or the other whether this could become a basis for denying him admission to the Bar. Perhaps I am assuming something, but I think it is a fair assumption that the interest of the Committee is in some of the questions that were not answered in the first proceeding. In this connection the court both in Konigsberg and Schware indicated that even if the answer to the question of, "Are you a member?", "Have you ever been a member of the Communist Party?" were answered in the affirmative that this in and of itself would not be a sufficient basis upon which this Committee could [fol. 15] predicate a decision adverse to Mr. Konigsberg.

Now, assuming this to be the situation there would then seem to be no purpose in carrying the question of Mr. Konigsberg along these lines any further, because the key problem so far as this Committee is concerned is the question of does he believe in force and violence, and under 6064.1 this question has been answered. The opportunity

to establish any affirmative showing that there was any belief on his part has been provided in the record, and nothing has been shown or could anything be shown of any action at any time in the man's life indicating a belief in overthrow of the government by force and violence, so that where the situation arises that if the question were answered either way it could not be determinative of the issues here.

We submit that there is no point in proceeding further, and that the court by its decision in both Konigsberg and Schware has indicated that the record even in its present status, and with the lack of answer to the question has been resolved in a manner favorable to Mr. Konigsberg. We would submit there is no point or relevancy to proceeding with further questioning. On this basis, and of course implicit in my entire comment on this is, of course, that it is our position and was at the previous proceedings and of course is now that the nature of these questions [fol. 16] falls within the First Amendment protection, as included within the Fourteenth Amendment, and that the balance of the reasons why the Committee seeks to ask the question against the important protections which the First Amendment is intended to provide must weigh the balance on the side of the protections, and this, of course, ties back to my previous point that even if you got the answer to the question, which we say is within this protected area of the First Amendment, you will have availed yourselves nothing in proceeding further to make the determination of the good moral character, because the answer, even if yes, would not without more, provide a basis for denying him the right to practice law.

And so we submit basically, if it please the Committee, that we have the law of the case, and the law of this case has been established by the Supreme Court, and that in this day, and particularly today where the challenge to the court in other parts of the country is certainly looked upon with considerable disfavor by, I think, a substantially large proportion of the population, I think it is a serious thing to now conduct further hearings in the light of what seems to have been a clear mandate from the Supreme Court to act in a particular manner.

I think that one cannot read the decision in Konigsberg and Schwarze without coming to only one conclusion, and [fol. 17] that is that the court examined these facts, and looked it over, and they said, "Here is a man on the record here, and on the basis of his life—" as a matter of fact, the language that they used, I am sure you recall it: ". . . is not an adequate basis for concluding that he is disloyal or a person of bad character. A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."

I think that the whole principle of law involved here, the whole principle that the Supreme Court of the United States has acted in this matter, that it has handed down a mandate, that the obvious intent of that mandate was that this man should be admitted, and I submit and therefore move to the Committee that without further proceedings this Committee should act in a manner not inconsistent with the decision which we believe must be an action to recommend his admission.

Mr. Maxfield: Mr. Mosk, the Committee of Bar Examiners does not admit anybody to practice law. Shouldn't your motion be directed to the court?

Mr. Mosk: I have directed such a motion to the court, and the court acting on that simply sent it back to this Committee. Now, it may be that the court following its usual procedure of only acting where there has been a recommendation for the Committee, it is difficult for any [fol. 18] one to guess what was in the minds of the Supreme Court of California. We know that at least Justice Carter was of the opinion that Mr. Konigsberg should be admitted immediately, because he attached this comment to the action of the court in sending it back here, but I see no reason to presume from the return of the matter here that the Supreme Court of California does not agree with my position. One guess is as good as another, I think, as to what they had in mind in sending it back here, but I did make the motion there, and their action was to send it back here. But I did make the motion there, and their action was to send it back here.

Chairman Whitmore: Your motion has been heard and will be noted by the Committee, Mr. Mosk. May I inquire of you whether or not in view of your motion it is your position that Mr. Konigsberg is not available before the Committee today for questioning? Is that the substance or the effect of your motion?

Mr. Mosk: No, it certainly is not. I would like to at least have the record be clear as to whether my motion has been denied, and if it is denied we of course will remain, and Mr. Konigsberg will submit himself to all questions.

Chairman Whitmore: Then it is your request that the motion be acted upon by the Committee as a preliminary? [fol. 19] Mr. Mosk: That would be my request.

Chairman Whitmore: May I suggest, Mr. Mosk, you leave the Committee in executive session and we shall consider the motion which you have made.

(Messrs. Mosk and Konigsberg, and the reporter then left the room while the Committee went into executive session, following which they returned.)

Chairman Whitmore: May we go back on the record? Your motion, Mr. Mosk, has been denied by the Committee at this time. We will engage in further proceedings in conformance with the order of the Supreme Court of the State of California, the order of July 10 in this case. I would like to read that order into the record. It is in Case No. LA-23266 in the Supreme Court of the State of California in Bank, Raphael Konigsberg v. State Bar of California. "Pursuant to mandate of the Supreme Court of the United States, its order that the decision of this court, filed April 20, 1955, be vacated, and the matter of admitting Raphael Konigsberg to the practice of law in all the courts of this State is referred to the Committee of Bar Examiners for further proceedings. Carter is of the opinion that the application of Raphael Konigsberg for admission to practice law in all of the courts in this State should now be granted. Signed Gibson, Chief Justice."

Are there any other matters, Mr. Mosk, before we proceed? [fol. 20]

Mr. Mosk: If you are then proceeding, Mr. Chairman, we do have one witness that I asked to come for just a very few questions, and it might be for his convenience,

if it doesn't inconvenience the Committee; if we heard him first so that he could then go about his business.

Chairman Whitmore: Without objection from members of the Committee we shall hear from your witness, Mr. Mosk, now.

(Mr. Herbert D. Tobin then took the witness stand.)

HERBERT D. TOBIN, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mosk:

Q. Will you state your name to the reporter, please?

A. Herbert D. Tobin, T-O-B-I-N.

Q. Mr. Tobin, where do you live?

A. 13727 Mulholland Drive, Beverly Hills.

Q. And what is your business or occupation?

A. Builder.

Q. How long have you been engaged in that business?

[fol. 21] A. Twenty-one years.

Q. And has that work been at all times in Los Angeles or in other parts of the country?

A. No, I learned the trade from my father in New England; Boston, in 1936, and worked steadily at it until 1945 when I came to California, and have worked here for the past twelve years steadily as a builder.

Q. Will you tell us your educational background.

A. I graduated from Boston Latin School in 1930, Harvard College in 1935, took one year of law school, and with all due respect to you gentlemen found Mr. Willson and I disagreed about certain things. In fact he told me if it was justice I wanted I should go across the street to the theological school, he only taught law. So I took my credits at the end of the year and never went back. I get mail from them for many, many years afterwards, why I didn't come back, but I never did. I took various other courses at Tufts College in Engineering; various phases of engineering and construction engineering, and

some engineering courses at M.I.T., the Franklin Institute there in various phases of construction problems and engineering.

Q. Could you tell us, Mr. Tobin, just a little bit about your business activities in Los Angeles in the last few [fol. 22] years, what has been the nature of your building activity?

A. We have built tract houses all over the metropolitan area and in Orange County. Our volume grew to at one point about 950, almost 1,000, houses a year. We are slowing down very drastically from that point right now. The building business has problems.

Q. Mr. Tobin, in the course of your activities in the building business have you had occasion to meet Mr. Raphael Konigsberg?

A. Yes.

Q. When was that, approximately?

A. About two and a half years ago.

Q. Has Mr. Konigsberg performed any services for you in the last two and a half years?

A. Yes, we hired him as Office Manager. We had a very serious administrative problem, heavy work load, paper, large staff, and not adequate control. His qualifications were excellent for that job. We hired him, and he has worked for us since then.

Q. Now, how close contact have you had with him in that two and a half years?

A. Very intimate. He works in the next office from mine, and he is the top executive officer in the office. I talk to him at least once every half hour, if not oftener.

[fol. 23] Q. Now, in the course of this two and a half years, Mr. Tobin, have you had an opportunity to observe Mr. Konigsberg's character, in so far as his honesty, his integrity, his ethics, his morals? Have you had a chance to form an opinion as to Mr. Konigsberg in connection with these characteristics?

A. I have.

Q. Could you tell us what that opinion is?

A. It is almost embarrassing to state because I have to use only the very extremest terms which is a very rare thing, and it must sound almost like an exaggeration. I

think he is probably the most honest, both intellectually as well as legally the most honest, man I have ever met. That was one of the things that impressed me in the very beginning when I hired him, and it has been reaffirmed by our experiences in the past two and a half years. His ethics and his attitudes, his sincerity, his loyalty is beyond all reproach.

Q. Have you had an opportunity to give him responsibilities in connection with his work for you?

A. Oh, most certainly. He has full power to sign checks on our general account, which at times may have as much as a quarter of a million dollars in it. It is a joint signing with others in our company, but there are very, very few others. And he has complete charge of all day by day office [fol. 24] problems. Anyone that calls our office, and we have thousands of calls a day, if they have any problem which the girls or subordinates can't solve it is automatically referred to him, and he has complete authority to use his best judgment in solving it.

Q. Have you made him an officer of any of your corporations under which you conduct your business?

A. We have. He is a Vice-President of most of the companies.

Q. And that is a number of different corporations, I take it.

A. Yes. We naturally have to have different companies for different jobs, because there are multiple problems and divisions of interest.

Q. In the course of two and a half years have you had any indication of any impediment to Mr. Konigsberg's moral character that you have been able to observe?

A. No. There is an interesting sidelight to a situation of this sort. It might conceivably throw some light on it for your purposes. He has leaned by obvious natural inclination so very, very far to the side of fairness and ethical attitudes beyond the usual that sometimes it acts as a handicap from strictly a business point. I have difficulty with him on rent collections, and things of that sort. His tendency is to exceed what I consider good bounds of business judgment and taking firm attitudes towards [fol. 25] collecting money. There seems to be an extra

measure of consideration given to the other fellow. Maybe I am being too businesslike, too arbitrary, but if I have ever had any fault to find that is the only one, and I am not sure in my own mind if that is a fault.

Q. Have you observed in the course of the two and a half years any indication on the part of Mr. Konigsberg of a belief in the overthrow of the government by force and violence?

A. No, that is completely childish.

Mr. Mosk: No further questions. Thank you, unless the Committee has questions.

Chairman Whitmore: Does any member of the Committee have questions of Mr. Tobin? No questions. Thank you, Mr. Tobin, for coming in.

Mr. Mosk: Thank you, sir.

(Mr. Tobin was then excused.)

Chairman Whitmore: Mr. Mosk, anything else?

Mr. Mosk: I have nothing further.

Chairman Whitmore: The Committee has some questions of Mr. Konigsberg. Mr. Konigsberg, may I ask that you stand and be sworn.

(Mr. Raphael Konigsberg then took the witness stand.)

[fol. 26] RAPHAEL KONIGSBERG, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Tucker:

Q. Mr. Konigsberg, since the date of your application for admission to practice was filed, I believe, or signed on June 29, 1953, have you, as a member of any profession or organization or holder of any office, been suspended, disbarred or otherwise disqualified?

A. I am not sure that I— You mean any job, for example?

Q. Yes.

A. Have I been fired, is that what you are saying?

Q. Disbarred, suspended or otherwise disqualified.

A. No.

Chairman Whitmore: May I ask that you answer vocally.
The reporter cannot take a shake of your head down.

A. If I understand the question it is whether I was fired, suspended, disbarred.

(The reporter then read Lines 6 to 10, inclusive.)

A. No, I have not been disbarred, disqualified, or suspended [fol. 27] pended. If you are speaking of a job that vanished because the organization was dissolved, there was such a thing.

By Mr. Tucker:

Q. Have you ever been reprimanded, censured or otherwise disciplined?

A. In any job or office?

Q. This is in the context of the previous question.

A. Since the date you mentioned?

Q. Yes.

A. No.

Q. Have any charges or complaints, formal or informal, ever been made or filed against you, or have any proceedings been instituted against you?

A. You mean lawsuits?

Chairman Whitmore: Again in the context of the former question, Mr. Tucker?

Mr. Tucker: That is correct.

A. You mean have I ever been sued since that date?

By Mr. Tucker:

Q. Since that date.

A. No, I have not been sued, not to my knowledge, unless there is a Small Claims action pending against the Tobin Company and me jointly.

Q. Not in your individual capacity?

A. No.

Q. In response to the other question, have any charges [fol. 28] or complaints, formal or informal, ever been made or filed against you?

A. Not to my knowledge.

Q. Since the date of your previous application have you held a bonded position?

A. When you say previous application you are referring to the time I filed to take the Bar examination?

Q. Yes, referring to the application which you signed on June 29, 1953.

A. Have I ever applied for a bond?

Q. Have you held a bonded position?

A. You mean where a bonding company gives a bond for some fiduciary position?

Q. Right.

A. I don't recall. I think that I did make— Well, I filed for a bond for the company, for the Tobin Company, but not my own. I don't remember. Maybe it was for myself as Office Manager. It could have been. I don't remember.

Q. To your knowledge has anyone attempted to recover on this bond?

A. Oh, no, if there has been a bond. I don't know. Not to my knowledge has there ever been such actions where I have been involved.

Q. Since the date of your previous application have you [fol. 29] served in the armed forces of the United States or of any other country?

A. Not at all.

Q. Since the date of your previous application have you been summoned, arrested, taken into custody, indicted, convicted or tried for or charged with the violation of any law or ordinance or the commission of any felony or misdemeanor, including traffic violations?

A. I think I did get a ticket for turning left at Echo Park and Sunset about six or seven months ago. I didn't go to court, I paid through the Auto Club.

Q. Is that the only type of crime you have been charged with?

A. Yes. I have never been charged with any crime.

Q. Have you pleaded guilty to any charge or violation of any law or ordinance or have you committed any felony or misdemeanor, including traffic violations? You answered the traffic violations.

A. I suppose by paying the fine I pleaded guilty to that, but there has been no other action of any other kind.

Q. That is the only action?

A. Yes.

Q. Since the date of your application have you been requested to appear before any prosecuting attorney in [fol. 30] any matter?

A. No, not before any prosecuting attorney. I have never appeared before any prosecuting attorney in my life.

Q. We are aware of your appearance before the House Un-American Activities Commission on June 29, 1955. Other than that, Mr. Konigsberg, have you appeared before any investigative agency in any matter?

A. No, not to my knowledge. I don't recall any.

Q. Since the date of your previous application have you been a party to or had or claimed any interest in any civil proceedings, including divorce?

A. No.

Q. Since the date of your application have you been declared a ward of any court, or adjudged an incompetent?

A. I have never been involved in any legal action since or before or anything other than that traffic violation, to my judgment.

Q. You have never been committed to any institution?

A. No, not to my knowledge.

Q. Since your previous application have you been charged with fraud, either formally or informally?

A. No.

[fol. 31] Q. Since the date of your previous application have you been adjudicated a bankrupt, or has a petition in bankruptcy been filed by you or against you, either alone or in association with others?

A. No.

Q. Have you been brought in as a party to any bankrupt proceedings?

A. No. There have been a couple of bankruptcy proceedings of home buyers who therefore were unable to make payments. I wasn't, and the company really wasn't involved either.

Q. You were not a party?

A. No.

Q. Have you been sued or threatened with suit by the receiver, trustee, or other authority of any bankrupt estate, for unlawful preference, conspiracy to conceal assets, or any other fraud or offense, whether or not punishable by criminal law?

A. No, sir.

Q. Are there any unsatisfied judgments against you?

A. No, sir.

Q. Are you in default in any way in the performance or discharge of any duty or obligation imposed upon you by decree or order of any court; including alimony and support orders and decrees including those barred by the [fol. 32] statute of limitations?

A. I don't owe anything past due. I owe a couple of payments on my car, and an account at the May Company, nothing past due.

Q. Since the date of your previous application for admission would you state what occupations, businesses or professions that you have been engaged in, in addition to your employment with Tobin Homes?

A. Let's see, I took the Bar examination in October of '53, and quite frankly because of the action of this Committee I could find no employment until I secured self-employment in the nature of leasing a, well we call it, a surgery. Perhaps the Committee should know there are these private surgeries which are surgical rooms and registered nurses available for doctors for minor operations in medical buildings. Since I had much acquaintance with doctors and nurses, the people who operated this clinic on Wilshire Boulevard suggested they lease it to me on an option basis and see if it would work out. I leased it for two months, and I believe it was February and March or January and February, I am not sure, of '54. It didn't work out. That is there were a lot of small hospitals being built in the area, and the doctors preferred to go there because they had better equipment. It was not a paying proposition and I gave it up after two months. And then I think there is another two months that passed, and I [fol. 33] secured employment with an organization known as the Ormsby Village for Youth Foundation, and this was a trust, rather a trust gave the money to set up this Foun-

dation, the purpose being to operate children's camps. It was for children of underprivileged parents, I mean parents of low income, I worked with them from roughly April of '54 until I think it was October of the same year '54. And then again I was unemployed for the same reasons, and then in May of '55 I secured employment with the Tobin Company, which I have kept since.

Q. Mr. Konigsberg, you said you were unemployed for the same reasons. What were those reasons?

A. The reasons are because of the action of the Committee denying me a license I couldn't secure employment with attorneys which I preferred, so I had to seek other employment.

Q. What was the reason for the termination of your employment at Ormsby?

A. The organization was dissolved.

Q. The only period unaccounted for is October, '54 to February of '54. You were unemployed?

A. Yes, that is what I said at the first I was unemployed.

Q. Were you living here in Los Angeles?

A. Yes, at my home.

Q. Since the date of your previous application have you [fol. 34] been dismissed, discharged or requested to resign by any employer?

A. No, I have only had the two employers. One the organization dissolved, and the other one you heard a few minutes ago.

Q. All right, has there been any incident of a derogatory nature which occurred in your life since the date of the previous application for admission to practice, not called for by the preceding questions, that may have some bearing on your character and fitness to practice law?

A. Not to my knowledge.

Q. Mr. Konigsberg, are you now or have you ever been a member of or affiliated with any organization a purpose of which at the time of your membership or affiliation is or was to advocate the overthrow of the constitutional form of government of the United States or of this State by force, violence or other unconstitutional means?

A. Mr. Chairman, the question, of course, is similar to the question asked me four years ago, though phrased some-

what differently, and while I think we all change somewhat in four years even at this age in our thinking, the basic principles that I established in that case and in those hearings that questions regarding one's political thinking [fol. 35] are protected by the First Amendment and have no bearing whatsoever on one's moral character, have, I think, pretty well been determined by the Supreme Court opinion in my case. And certainly having the Supreme Court vindicate my opinion and principles which are now in effect, and in a sense the law of the land because of the Supreme Court opinion, I could hardly be expected at this point for expediency to give up principles that have been upheld by the highest court of our country. However, I appreciate very much and in all sincerity the problem that this Committee faces, and that the members of the Committee are no doubt as concerned with principles and their own conscience and the law of the land as I am.

I would like to in order to be able to help this Committee, and I do want to help the Committee in the discharge of its duties, both as a citizen and as a lawyer, I would like to understand very clearly what is encompassed in this question, because it seems to me we have got to have an understanding of terms. There has been too much kicking around, to use a loose phrase, of Communist Party, of force, and violence, and overthrow of the government, and I am happy to say that a greater degree of sanity seems to be returning to public counsels in this matter despite the action of Southern authorities with respect to other Supreme Court opinions.

Now, if you are asking me whether I as a person ever belonged to an organization that advocated the overthrow of the government by force and violence, according to my knowledge of it, or whether I personally ever advocated this or ever did anything such as throwing a bomb or writing a leaflet or speaking of advocating the overthrow of the government by force and violence, or even whether I even attended a meeting at which force and violence was proposed as a course of action, the answer is no. I personally have never been a member of an organization which to my knowledge engaged in such advocacy. I never could be or would be. I never did a

thing in that direction I made clear in the prior hearings. But if you are asking me whether I as a citizen have in the course of normal civic or political duty, describe it as you will, because I think the record does make clear that I have a strong civic conscience, if what you mean by your question is did I ever join with people who were known to be members of the Communist Party, if that were the case, or whether I personally joined the Communist Party as a legal political organization in this State, which the Supreme Court, in my opinion, makes clear it was at the time, then I refuse to answer that phase of the question, because this is in the area protected by the First Amendment from ages past, and certainly reaffirmed in recent decisions, including my own.

Now, having said this and stated this emphatically there is really little else I can say. Any other type of questions similar to this I can only give the same type of answer, because it seems to me whatever doubts you may have about my character it is the rare applicant who can come before a Committee of Bar Examiners with what is in fact a testimonial from the Supreme Court of California.

Chairman Whitmore: The question, as I understood it, dealt with whether you were ever a member of an organization which to your knowledge at the time you were a member advocated the overthrow of the government. I believe you answered that question no.

A. That is right. I wanted to add the further thought, because I think it is part of the picture. I think the record makes very clear whatevgr you may think of those principles that I have tried to live a principled life, and that being the case you can hardly ask me as a matter of conscience or a matter of principle to give up various principles. This would be committing on my part an immoral act. I doubt very much that the Committee intends to take the position that to prove his good moral character an applicant must commit what to him is an immoral act.

Chairman Whitmore: The question has been asked and answered. Have you other questions?

By Mr. Tucker:

Q. Are you now or have you been a member of or affiliated with any group, association or organization which at the time of your membership or affiliation lent or lends [fol. 38] support to any organization or movement advocating the overthrow of the constitutional form of government of the United States or of this State by force, violence or other unconstitutional means?

By The Witness:

A. I think my previous answer covers it. I will only reaffirm to my knowledge I have never been a member of such an organization or group, a part of an organization, or however you want to phrase it. I think this would clarify the matter. May I say that I think you are rightly concerned with matters of advocacy of the overthrow of the government, but it seems to me you had the opportunity in the previous hearings, and you have it now if you have evidence of any illegal acts on my part, then they should be brought forward, and give me a chance to answer them, and, I will be happy to answer them, not proceed on the basis of mere suspicions. If you have acts, or evidence of any acts, I ask you now to bring them forward so I can answer them.

Chairman Whitmore: Mr. Konigsberg, as indicated at the beginning of this proceeding, the Committee is really charged with two functions, one to investigate, and one to determine. Your counsel has asked the Committee, asked me, for an indication as to the scope and purpose of this hearing. I indicated to him what the scope and purpose is, and as a result you are aware of it. We are engaged in the function of investigating matters which we are [fol. 39] charged with the responsibility of determining under the law of the State of California. We have every intention and desire of carrying out that investigative duty consistent with the constitutional protections and freedoms that the United States and the California constitutions provide. We still have an obligation to investigate. I believe that we are charged with this responsibility as

it might apply to your application for admission. That investigation can be carried out in a number of ways. In connection with determining whether or not you meet the minimum standards to practice law as far as the knowledge of the subject of law is concerned, we have asked you questions in an examination, and you have given us answers. In connection with other requirements for admission to practice, as set forth in the Business and Professions Code of California, we have asked you to fill out an application, which you have done. Also as part of our investigation and your satisfying each and all of these requirements to practice law we have called you before the Committee. We have asked questions of you. We are merely now engaging in that investigation which we have engaged in by having hearings, by having you fill out applications, and by asking you to take an examination before. Now, this is part of that same function. If we, Mr. Konigsberg, at this point had someone who would testify that such and such was not the case with respect to an answer that you have given, we [fol. 40] would feel it incumbent upon us at the time or at another hearing to bring that person before you and have testimony introduced into the record in order that you would have the right to cross examination through your counsel. We have not completed our investigations. I am sure you realize from the questions being asked that this is not necessarily a terminal hearing or proceeding. It may very well be; it may not be. It depends entirely on the success with which our investigation as to matters covered by the statute is completed in the hearing today. I am speaking in this latter respect only with respect to myself as one member. I can't speak for the other six. Mr. Tucker has some other questions of you. I would appreciate it if you would go ahead and ask them, and you answer them if you wish, or take whatever position you feel you wish to with respect to the questions he asks.

By Mr. Tucker:

Q. Mr. Konigsberg, have you been a member of the Communist Party at any time since 1951?

By the Witness:

A. Well, my previous answer applies. That is that phase of the answer where I say that if you are asking me about whether I as a citizen ever joined a group which was a legal party in the State of California then I refuse to answer, because that area is protected under the First Amendment [fol. 41] guaranteed by the Constitution, and in my interpretation Article I, Section 1 of the California Constitution. In this area you are not allowed to intrude.

Q. Then you refuse to answer?

A. I decline to answer on the basis of the rights guaranteed in those two constitutions, and the Supreme Court interpretation of those rights.

Q. Would your answer be the same with reference to 1952?

A. Yes, at any time.

Q. Up to and including the present time?

A. Including this minute.

Q. Mr. Konigsberg, it appears from your previous application for admission to practice that you were a member of the Board of Directors of the California Labor School in 1948. You testified on September 7, 1948 before the California Senate Fact-Finding Committee on Un-American Activities that you were a member of the Advisory Committee of the Los Angeles Division of the California Labor School. Were these identical bodies, or did you serve on both groups?

A. Well, I didn't hear two names mentioned, I thought just one.

Q. You referred to it as a Board of Directors on your application.

A. No, it was the Advisory Board. I guess I used the [fol. 42] wrong terminology.

Q. One group?

A. Yes.

Q. During the term of your membership on the Advisory Committee were you in a position to accurately know of the aims and purposes of the school and the activities in which the California Labor School was engaged?

A. At that time?

Q. At that time.

A. Well, as it so happens I think I attended two, perhaps three, meetings of the Board, but I can say I understood or I never would have joined the Advisory Board if I didn't know what they were doing. As I say though it was just for a very short period, two or three meetings. Then this organization was dissolved.

Q. Were any of such activities in furtherance of the purpose of the school to advocate the overthrow of the constitutional form of government of the United States or this State by force, violence or other unconstitutional means?

A. Not to my knowledge. I never heard any such discussion or any such language used.

Q. Thank you, Mr. Konigsberg. While you were a member of the Committee—

A. It was called an Advisory Board; I believe.

Q. While you were a member of such Advisory Board [fol. 43] did you know that the California Labor School, Incorporated, was listed as a subversive and a Communist organization by the Attorney General in letters to the Loyalty Review Board released on June 1, 1948, and September 21, 1948?

A. Not to my knowledge. I think by that time the organization was dissolved. It couldn't have been listed. I think we ought to clarify this, Mr. Tucker. The California Labor School had two branches, as I recall, one in San Francisco and one in Los Angeles. The Los Angeles division was dissolved just within a matter of weeks after that hearing. I think that was in '47 when I appeared before the Tenney Committee, if you will check the dates.

Q. I believe it was '48.

Q. There hasn't been any Southern California Labor School since that date.

Q. Since 1947 or 1948?

A. Whatever the date of the hearing. It was several weeks, as I recall now, maybe it was several months, but it seemed to me was shortly after the Tenney Committee hearing that the Southern branch of the Labor School was dissolved.

Q. The Tenney Committee hearing was held on September 7, 1948.

A. Well then it was '48, whatever date it was, but I [fol. 44] never attended any meetings after that hearing, to my knowledge, and I don't know and didn't know then that the school continued to exist after that date; but that, of course, is distinct from the school up North in San Francisco. Of course I never had any association with the school up in San Francisco. In fact I have only been to San Francisco once in my life.

Q. I have questioned you as to whether or not to your own personal knowledge the California Labor School had as a purpose the overthrow of the constitutional form of government by force, violence and other unconstitutional means. You have answered no.

A. No, not to my personal knowledge. I am certain that was the case.

Q. To your own personal knowledge did this organization engage in any other illegal activities?

A. Not to my knowledge at all. If I am not mistaken, Mr. Tucker, and this may help, wasn't that school certified for the G.I. Bill of Rights, and if so you could hardly be guilty of an illegal act.

Q. I don't know whether it was certified or not.

A. I think you will find that to be the case, I believe.

Mr. Tucker: I have no further questions, Mr. Chairman. [fol. 45]. Chairman Whitmore: Mr. Konigsberg, I think you will recall that I initially advised you a failure to answer our material questions would obstruct our investigation and result in our failure to certify you. With this in mind do you wish to answer any of the questions which you heretofore up to now have refused to answer?

By the Witness:

A. You mean at this hearing?

Chairman Whitmore: Yes.

A. No, I don't wish to change my answers in any way, Mr. Chairman. I think in all fairness we should understand this. The Committee has just said that failure to answer questions would obstruct your ability to make a determination, and I believe in the petition for a rehearing to the

Supreme Court, which was denied, Mr. Belcher stated that the efforts of the Committee were frustrated. I think that was the word he used. Now, I would like to understand in what way the Committee speaking through Mr. Belcher, and now through the Chairman, feels that they have been obstructed or frustrated, because actually you have as you yourself stated two functions, in effect to determine whether I have good moral character and whether I advocate overthrow of the government by force or violence, perhaps two parts of one function.

Chairman Whitmore: Let me explain one thing that may be helpful to you. I think you are aware, are you [fol. 46] not, of the legislation that was passed by the U. S. Congress in 1950 and 1954 with respect to the Communist Party and legislative findings with respect to its aims and purposes. Are you aware of the fact that the Communist Control Act and the Internal Security Act were passed in those two years? Mr. Tucker asked you questions concerning your membership in the Communist Party during the period and only during the period after the passage of the first of those two Acts. His question was have you been a member of the Communist Party since that time. Now, certainly you have a right—a constitutional right—to claim constitutional privilege if you wish, Mr. Königberg. I merely wish to point out in answering your question that the period of time covered by the question asked by Mr. Tucker was the period of time after which legislative findings as to this organization as a body had been made and adopted and became the law of the land.

A. Yes, of course I am aware of that. I repeat I don't wish to change my answer in any way, but I think the point I started to make does need some clarification, and I might add since you raise the point since the Supreme Court said, in my opinion, that even if proved membership in effect has no bearing on good moral character. I cannot see the relevancy of the question.

[fol. 47] Mr. McGovern: Didn't the court qualify that statement to membership in 1941?

A. Well, I don't recall the dates, but assuming even that they did it is the fact of membership that you are concerned

about as much as the specific period. Now, I think the more important point that you are making is this, and the one I was referring to by the word frustration, just how does this Committee feel it has been frustrated, and what are you frustrated in? You can't just say you are frustrated and pick up your marbles and go home, so to speak.

Chairman Whitmore: How can we make a determination with respect to the nature of your activities with the Communist Party if you were, assuming you were, a member if we have no basis for questioning you concerning them? You won't answer our question as to whether or not you were ever a member. That question in that respect would be a preliminary question, would it not?

A. You have asked me if, I advocate the overthrow of the government, if I committed any illegal acts. I answered gladly. I never have, I don't now, and I never will. I am incapable of doing it.

Mr. O'Donnell: Suppose we don't believe you, don't you think we are entitled to ask you as to your association with the Communist Party and your membership with the Communist Party as part of our examination?

[fol. 48] A. You are entitled to ask me only with respect to phases of illegal activity. You cannot ask me or any citizen about his activities that are legal, that are protected under the First Amendment, under the part of normal civic activity. I don't believe you can, or I misread all the opinions of the Supreme Court, including the most recent up to today, because it seems to me that you have not been frustrated. You have been able to secure the information you need. You have to prove two things, whether I have good moral character, and whether I advocate the overthrow of the government by force or violence. I think the evidence in the record so far indicates that I have a fairly acceptable moral character, if not a good one, and I think it is a good one. The Supreme Court thinks it is a good one. Secondly, you have a right to ask me whether I advocate the overthrow of the government. I answered no, and invited you to submit any evidence of any acts indicating I did these illegal things. What else can you do?

Chairman Whitmore: If you answered the question, for example, that you had been a member of the Communist Party during some period since 1951 or that you were presently a member of the Communist Party, the Committee would then be in a position to ask you what acts you engaged in to carry out the functions and purposes of that party, what the aims and purposes of the party [fol. 49] were, to your knowledge, and questions of that type. You see, by failing to answer the initial question there certainly is no basis and no opportunity for us to investigate with respect to the other matters to which the initial question might very well be considered preliminary.

STATEMENT BY MR. MOSK

Mr. Mosk: I wonder if I might interject a legal approach to this problem? In California we have something of a legal history of the very type of question which the Committee is asking and for which there has been a declination to answer. We have the legislation 6064.1, and I think Mr. Königsberg indicated, and I would indicate, there is some question as to whether this statute itself is constitutional, and for the record I would want to say that we would challenge the constitutionality as a violation of the Fourteenth Amendment. Since it is the law of California, there has been no declination on the part of Mr. Königsberg to respond to this. He has responded to it fully, and is prepared to answer any other questions in this area. Now, there have been over the years in California any number of additional bills introduced directed specifically to the lawyer, and these bills have died at various stages of the legislative history. Some of them have been introduced within the State Bar organization and have been defeated there, some of them have gone beyond the [fol. 50] State Bar as a recommendation of the Legislature, and some have been introduced in the Legislature with or without State Bar approval, and these bills have gone directly to the question which this Committee is now asking. They have endeavored to establish one form or another of what in general terminology are called loyalty oaths and questions as to membership in the Communist Party. Each and every one of these bills have been defeated at some stage of the legislative procedure.

I think it is significant at the time of the proceedings before the United States Supreme Court, when I appeared on behalf of Mr. Konigsberg, and Mr. Belcher appeared on behalf of this Committee, that Chief Justice Warren, as an ex-Californian specifically asked Mr. Belcher, he said, "Well, Mr. Belcher, isn't it true, if I remember what happened when I was in California, that various bills have been introduced to endeavor to do just what the Committee of Bar Examiners is endeavoring to do in this case?" and Mr. Belcher said, "Yes, of course," and Justice Warren said, "Well, weren't all those bills defeated in the Legislature?" so that it seems to me what we have here is a legislative history of efforts to do just what the Committee seeks to do here, the defeat of this as a matter of legislative history, and leaving a residue, a supply of the force and violence, 6064.1; and I submit that aside from the facts of the decisions we have in addition a legislative [fol. 51] history which I submit precludes the going into this question by legislative action.

Now, on this question of frustration, I am not unaware of the problem that is raised here. I was aware of it four years ago, and have been aware of it all through the proceedings to the United States Supreme Court, but I want to emphasize again what I touched on in my opening remarks that this question does not—the specific question that is asked—get the Committee anywhere. I mean if the answer to the question was yes, then your next question must of necessity be, "Well, at any meetings was force and violence discussed? Did anybody propose force and violence? To your knowledge was there force and violence considered in any of these meetings?" And I submit that this question, which is the key question, has been answered in every way that this witness can possibly answer it. He has said that he has never belonged to any organization that believed in force and violence, he has never heard any discussions of it, never been at meetings where force and violence was discussed. He has tried to answer this in every way he possibly can, and he has carried it the next step further and said if the state of the record would be such that there was an accusation that he believed in force and violence, that at such and such a meeting he did, or

somebody accused him of it, he would be prepared to answer directly to these accusations, but in effect if you are asking the question in the manner you are, which we submit penetrates into the protected area of the First Amendment you are in effect asking him to over a long period of time strip himself naked as to his personal beliefs and associations. You are asking him on the basis of general questions, without a basis for the questions, without a basis for assuming that the questions can lead to an ultimate decision unfavorable to him. By the same reasoning that you can ask is he a member of the Communist Party you could by the same reasoning perhaps go through every single organization that has ever been accused of being related to the Communist Party, without any basis for assuming that he has done any wrongful act in connection with these things. I submit when you do this, and in asking this question getting to the very heart of the reason, why there is a First Amendment protection against having to expose one's beliefs, associations, ideas, concepts, and so forth. The specific acts, if there are any, if there are any accusations against him he is prepared to answer 100 per cent and fully; but I submit that in this area you are prohibited by the First Amendment, and the persistence in asking or the determination upon his refusal to answer would be a violation of his rights under the Fourteenth Amendment.

Mr. Macomber: Mr. Mosk, you realize that if Mr. Konigsberg had answered the question that he refused to answer, an entirely new area of investigation might be opened up, and this Committee might be able to ascertain from Mr. Konigsberg that perhaps he is now and for many years past has been an active member of the Communist Party, and from finding out who his associates were in that enterprise we might discover that he does advocate the overthrow of this government by force and violence. I am not saying that he would do that, but it is a possibility, and we don't have to take any witness' testimony as precluding us from trying to discover if he is telling the truth. That is the point.

Mr. Mosk: I am well aware of the position and the reasoning of the Committee. I simply feel that from a

legal point of view, and based upon the Konigsberg and Schware decisions I believe that the question invades his rights and is not a proper question, and that his failure to answer it cannot become the basis of a decision unfavorable to him, but I am well aware of the problem.

Mr. Macomber: One of us must be wrong.

Mr. Mosk: Right.

Chairman Whitmore: Does any member of the Committee have further questions of Mr. Konigsberg?

Mr. McGovern: I want to state that I think that a membership in the Communist Party is certainly relevant on the question of forcible overthrow. Mr. Konigsberg has [fol. 54] stated his denial with respect to forcible overthrow and tells us we must stop there. I don't feel we have to. I think we have a right to explore that, and if there is a relevancy between membership in the party and forcible overthrow, that is a relevant question, and as pointed out that failure to answer our relevant questions may result in denial of certification.

The Witness: I don't think, Mr. McGovern, you are interpreting what I said correctly. I didn't say you can't go any further and ask me about the overthrow, and stop and not ask me anything further. I have changed my thinking from four years ago. Mr. Whitmore asked me. You can ask me did I believe in the overthrow of the government, or did I throw a bomb, or do any act. Do you have any evidence of illegal acts? Bring them out, but you haven't done that. And I disagree emphatically with the previous speaker that you have a right to inquire further. That is what the Supreme Court rulings and Constitution say. You cannot, and have no right, and it is my duty as a citizen to resist your doing this, what is to me an unconstitutional act. The thing always followed, and I remember distinctly in the Army orientation programs I had reference to in past hearings, when General Marshall and Eisenhower set up the program said, "It is our duty to educate soldiers to become good citizens." They made it very clear and in many writings you have as part of the [fol. 55] record that it isn't enough for an American to accept the various privileges that that citizenship grants to them. There are certain deep responsibilities that go with those privileges, and unfortunately most of us don't know

them, don't accept them, and are not taught them. I was, and I have tried to follow it. And one of the responsibilities of citizenship, among others, is such as going to war. I feel very strongly. Among the duties of a citizen to compensate for the great advantages he gets, it seems to me is to, of course, protect your country when in danger, whether war or other, to try to live as you might say a seven day practicing believer in democracy, not just on Sundays, and finally to defend the Constitution by refusing to join in any acts which in any sense weaken it or compromise it. I feel if you persist in asking questions which go into the areas which are protected by the Constitution, that is what you are doing. You are compromising constitutional principles. I cannot be a party to it no matter what the price.

Mr. Surr: Mr. Konigsberg, I of course am a new member of the Committee since the previous hearings, but I do feel notwithstanding my lack of intimate acquaintance with the previous proceedings except through the transcript it should be made plain, first, that so far as I am concerned, and I think so far as the rest of the members of the Committee are concerned, there is no intention by any [fol. 56] of these questions to ascertain merely your beliefs. So far as I understand these questions we are not going into the matter of beliefs at all.

I think, second, it should be pointed out that any question as to membership in the Communist Party presently or in the immediate past, if answered in the affirmative, would not necessarily conclude the matter so far as my thinking goes, and that I agree with Mr. Mosk that it is a preliminary question, but it does lead into the field of your activity, what group you belonged to, and what activities you conducted, and I think that you as an applicant for admission to the Bar do owe to your prospective fellow members of the Bar the duty of full disclosure as to your acts, and I think that it should be made plain that we are asking questions leading up to acts and advocacy, open advocacy, if you will, not to beliefs.

The Witness: Well, I have tried to answer I never advocated the overthrow of the government or belonged to an organization that advocated the overthrow of the gov-

ernment. I never attended meetings where this was done. I cannot agree that is all you are doing when you are asking these questions. What you are asking has already been answered. Any further evidence or information that you seek is invading my rights as to opinion or association, and as leaders of the Bar it seems to me you should be [fol. 57] among those strengthening these rights along with the trend of decisions to firm up constitutional conduct and get away from non-conformity that plagued the country in recent years.

Mr. Maxfield: Do you know if the Communist Party advocates the overthrow of the country by force?

~~By the Witness:~~

A. No more than what I read ~~by~~ the papers.

Mr. Maxfield: So that when you state that you have never belonged to any organization which advocates the overthrow of the government ~~by~~ force, that can't be taken as a statement that you never have been a member of the Communist Party!

A. No, it can only be taken to mean that I never belonged to an organization that advocated the overthrow of the government by force and violence.

Mr. Maxfield. You don't include the Communist Party in that statement?

A. I can't include or exclude.

Mr. Maxfield: I would like to know which you do.

A. Well, I would like to ask my counsel how he feels.

Mr. Mosk: I think it is probably asking in an indirect way the same question.

Mr. Maxfield: I think he has answered the question [fol. 58] he doesn't belong to the Communist Party, or has he?

The Witness: You see, Mr. Maxfield, it may seem odd to you at this crass age we are living in that people are willing to pay a price to uphold principles. I happen to be such a creature. I am not saying it is a commendation or virtue, but it is just the way I am constituted.

Mr. Maxfield: You stated you don't belong to any organization which advocates the overthrow of the government by force. You stated it here and in former hearings. Now, can we take that as a statement that you never belonged to the Communist Party?

By the Witness:

A. You can take it any way you choose. I can't answer you in any other way. I said at the start, didn't I, we must understand what terms we are using. Are you talking about an illegal organization, illegal acts, or are you talking about a perfectly legal political form of expression, which incidentally to my knowledge the Communist Party still is. I don't think it is outlawed by the Internal Security Act. Perhaps my interpretation is incorrect. I am not stating it as a fact. I think to this moment the Communist Party has not been outlawed. It is still a legal organization. I suppose if the party in California or any other State wanted to put people on the ballot they could if they got [fol. 59] enough signatures on the nominating petition. What I am trying to make clear, because I do want to help the Committee in its determination and to uphold the law, and to help it, and help other students apply for the Bar, and I realize incidentally you have the problem of a certain consistency that I suppose must exist among Bar Examiners throughout the country in various forty-eight States. That is why I tried to clarify the question and asked you and invited you if you had any evidence of illegal acts on my part to bring them forth and confront me with them. I say again—and this is the heart of the matter—you cannot ask anybody for any purpose about normal legal conscience and activity. If gets you nowhere and has no bearing on the question of good moral character.

Chairman Whitmore: Mr. Konigsberg, do you know as a matter of fact whether or not it has been an inward purpose of the Communist Party to advocate the forceful overthrow of the government at any time since 1951?

A. When you say do I know, you mean— Well, how do you mean do I know?

Chairman Whitmore: Do you know this to be a fact?

A. I will say from what I have read both as a student in school, as well as in the papers, and privately, I do not [fol. 60] believe that this is a part of the program. As a matter of fact, I think in my own opinion or was it the Schware opinion, the Supreme Court referred to various commendable practices that the Communist Party has at various times engaged in. I do not know that to be a fact.

Chairman Whitmore: Do you believe that it has been an aim or purpose of the Communist Party at any time since 1951 to advocate the forceful overthrow of the government?

A. I do not believe that, but I do not know that.

Chairman Whitmore: It is your belief that such has not been a function or an aim or purpose of the Communist Party at any time since 1951?

A. Well, judging by the various published materials available to everyone, which I do read, I would say no, not to my knowledge, unless I am misreading these documents.

Chairman Whitmore: Does any other member of the Committee have further questions?

Mr. O'Donnell: I would like to make this statement so that there will be no misunderstanding on the part of any court that may review this record in the future, that I feel that as a member of the Committee that the failure of Mr. Konigsberg to answer the question as to whether [fol. 61] or not he is now a member of the Communist Party is an obstruction of the function of this Committee, not a frustration if that word has been used. I think it would be an obstruction. There are phases of his moral character that we haven't been able to investigate simply because we have been stopped at this point, and I for one could not certify to the Supreme Court that he was a proper person to be admitted to practice law in this State until he answers the question about his Communist affiliation.

The Witness: What other phases of my moral character do you say have been obstructed in investigating by this?

Mr. O'Donnell: We haven't even touched the witnesses whose letters you have produced here because of your failure to answer this question. We have been unable to pursue that investigation any further because we feel at this point you prevent us from engaging in a legitimate inquiry.

The Witness: I frankly don't understand how. I think this explanation is owed me. How is this preventing you from pursuing any further line of inquiry?

Mr. O'Donnell: Because you simply make it impossible for us to engage in any investigation of your Communist activity. Mr. Macomber pointed out the area that might be investigated here. I think we have made ourselves plain. [fol. 62] The Witness: I can't accept that at all. In the first place under the various decisions it would have no bearing on the matter if you investigated it.

Mr. O'Donnell: We interpret the decisions differently.

Chairman Whitmore: Are there any further questions by any member of the Committee? Mr. Mosk, anything further?

Mr. Mosk: I have only this, Mr. Chairman. While we submitted a rather substantial number of letters in the previous hearings, for this hearing we felt that it would be well for you to hear a live witness, and so we brought Mr. Tobin. Without making any extensive efforts to secure additional letters, we felt that perhaps some additional communications at least bringing up-to-date the attitude of the community towards Mr. Konigsberg would be worthwhile, and so I would submit at this time a group of letters, if I may, for the record just indicate the nature of them. A letter from Lorris Gosman of Associated Machine Craft Company. A letter from J. Marx Ayres, Consulting Mechanical Engineer of 700 North Fairfax Avenue. A letter from Ruben W. Borough, insurance business. A letter from Allan M. Carson, an attorney, at 354 South Spring Street. A letter from Elaine B. Fischel, an attorney, at 742 South Hill Street. A letter from Dr. Joseph Goorwitch, a doctor. [fol. 63] practicing at 1052 West 6th Street. A letter from Robert Kennard, 5611 West Washington Boulevard, an architect. A letter from Harold Koppelman, a physician at 6333 Wilshire Boulevard. A letter from Seymour Myerson. It is not on any letterhead stationery. A letter from

Arlan W. Moore, a Certified Public Accountant, at 224 North Canon Drive. A letter from Richard H. Oshman, an attorney, at 8736 Sunset Boulevard; A letter from Jerome Borack, a Certified Public Accountant, 191 South La Cienega Boulevard. For the most part, and I think in almost each of these communications are dealing with persons who have known him in the immediate years since the last hearing. There may be some overlapping, but we endeavored to concentrate in that area. I have only one other matter, Mr. Chairman:

Chairman Whitmore: Any objection to the receipt of the letters enumerated by Mr. Mosk? If not, they shall be received by the Committee as a group as Applicant's exhibit next in order.

(The documents were then marked as Applicant's exhibit next in order.)

Mr. Mosk: I would have only one other comment, Mr. Chairman. We have become aware in the last months that the Committee was, and rightfully so, carrying on further investigation of Mr. Konigsberg. I think that the record should indicate that the Committee has made apparently [fol. 64] some independent investigation, the exact nature of which I have no way of knowing, but I think the record should indicate then that the Committee by reason of that investigation has not brought forward any further or any derogatory information.

Chairman Whitmore: Mr. Mosk, we are in the process of investigating. We may very well find it necessary to have another hearing, and we had no way of knowing when Mr. Konigsberg came in today what questions he would answer or what position he would take with respect to questions put to him by the Committee. You may be certain, however, prior to the time any information that is adverse to Mr. Konigsberg is considered by the Committee, Mr. Konigsberg and you as his counsel will be made aware of that adverse information.

Mr. Mosk: Thank you.

Chairman Whitmore: Is there anything further?

Mr. O'Donnell: Except to remind Mr. Mosk the burden is yours.

Mr. Mosk: It is not an arbitrary burden.

Chairman Whitmore: They will be received as the Applicant's next in order. The Committee will examine them, and notify you of the decision of the Committee, and if a further hearing is necessary we shall notify you.

"END OF HEARING"

[fol. 65] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 66]

(Stamp--Filed 9/21/57, No. 7794, In re Raphael Konigsberg, Committee of Bar Examiners, The State Bar of California.)

APPLICANT'S EXHIBIT "H"

ASSOCIATED MACHINECRAFT Co.

1417 SPENCE STREET LOS ANGELES 23, CALIF.

ANGELUS 3-0626

TOOLS & DIES • EXPERIMENTAL MACHINE WORK • JIGS & FIXTURES

September 17, 1957

Committee of Bar Examiners
of the State Bar of California.
Los Angeles, California.

Dear Sirs:

I have known Mr. Raphael Konigsberg for the past ten years. During this time he has shown himself to be an honest, sincere citizen a person of the highest moral character.

I feel that Mr. Konigsberg would be as great a credit to the legal profession as he has been to our community.

Sincerely yours,

/s/ **LORRIS GOSMAN**
Lorris Gosman

(Stamp--Filed November 19, 1957. William I. Sullivan,
Clerk, By R. J. Bell, L. A. Deputy.)

[fol. 67]

J. MARX AYRES

CONSULTING MECHANICAL ENGINEER

HIDEO ENDO, ASSOCIATE

700 NORTH FAIRFAX AVENUE • LOS ANGELES 46, CALIFORNIA

OLIVE 3-3731

September 18, 1957

Committee of Bar Examiners of the
State Bar of California
Los Angeles, California

Gentlemen:

It has come to my attention that Mr. Raphael Konigsberg is to appear before you regarding his admission to the State Bar of California. Since his legal rights to the Bar have been clearly defined in the courts of the land, you must no longer prevent this man from practicing his chosen profession.

I have known Mr. Konigsberg for approximately five years, most recently as an Associate of Tobin Company, and I know him to be trustworthy and honest. I consider him an exceptionally good citizen and devoted to the welfare of his fellow man. I am sure that Mr. Konigsberg will be a credit to the State Bar of California.

Very truly yours,

/s/ J. MARX AYRES

J. Marx Ayres

JMA/jm

[fol. 68]

RUBE BOROUGH • MADELEINE BOROUGH • JULIUS KOGAN

LET THE BOROURHS (Emblem) CARRY YOUR INSURANCE

THE BOROURHS and Associates

Office:

Clinton 6-3129

Home:

Capitol 1-1918 Capitol 2-7390

5922½ North Figueroa Street
Los Angeles 42, CaliforniaLos Angeles, Calif.
September 18, 1957.

Committee of Bar Examiners
 of the State Bar of California,
 Los Angeles, California.

Gentlemen:

If I could have had a son to my liking it would have been one in the image and substance of Raphael Konigsberg. I am utterly sincere in this statement. He is kindly, courageous, true and, withal, has a rare ability. What more has mortal the right to ask?

I have known "Rafe" for 20 years or more. We first met when I was associate secretary of the Los Angeles Municipal League and he, a social worker, had come for consultation on some community problem. From then on we were associated, rather closely at times, in civic and political matters and I had a good opportunity to judge both his integrity and wisdom. Believe me, Gentlemen, neither are to be doubted.

I cannot understand how the law could be benefited by a denial of Mr. Konigsberg's right to practice.

Respectfully yours,

/s/ REUBEN W. BOROUGH
 Reuben W. Borough.

[fol. 69]

ALLAN M. CARSON

ATTORNEY AT LAW

354 SOUTH SPRING STREET

LOS ANGELES 13

MUTual 1271

Committee of Bar Examiners
State Bar of California
Los Angeles, California

Gentlemen:

I am informed that Raphael Konigsberg will again appear before your committee as an applicant for admission to the Bar in proceedings said to be consistent with the decision of the United States Supreme Court on the subject. As a member of the California Bar in active practice I recommend the admission of Mr. Konigsberg unqualifiedly and unhesitatingly and regardless of what his political affiliations may have been in the past or what they may now be.

I have known him for a period of over eighteen years last past; and it is my considered opinion that his loyalty to the United States is without question, his integrity is above reproach and his sense of moral and social responsibility is so far above the average as to exceed that possessed by most practicing lawyers today. To one who has known him and observed him as long as I have, the fact of his qualification for admission to the practice of law, on the basis of character, integrity, loyalty and responsibility, becomes so plain as to render incompetent, irrelevant and immaterial any question as to political beliefs or associations past or present. Moreover, it is my humble opinion that refusal to admit a person as well qualified as he, can only reflect unfavorably upon our Bar.

I do not believe that the predilections of the individual members of your honorable committee should be allowed to enter into consideration of Mr. Konigsberg's qualifications; and I strongly recommend his admission on the basis of

his being eminently qualified in character for the practice of law.

Respectfully yours,

/s/ ALLAN M. CARSON
ALLAN M. CARSON

ame/e

cc: Edward Mosk, Esq.
6305 Yucca Street,
Hollywood, Calif.

[fol. 70]

A. W. MOORE & Co.
CERTIFIED PUBLIC ACCOUNTANT
224 NORTH CANON DRIVE
BEVERLY HILLS, CALIFORNIA

BUSINESS MANAGEMENT
TAX ACCOUNTING

BRadshaw 2-6035
CRestview 1-0568

CABLE ADDRESS
"ARLANMO"

September 17, 1957

Committee of Bar Examiners of
the State Bar of California
Los Angeles, California

Gentlemen:

I have been asked to write a letter with regard to Raphael Konigsberg who, I understand, is being examined for admittance to the State Bar of California.

I have known and worked with Mr. Konigsberg for the last five years. In that time, I have come to know him personally very well and hold him in high esteem.

I believe he will be a distinct addition both morally and professionally to the State Bar of California.

Yours very truly,

/s/ ARLAN W. MOORE
Arlan W. Moore

AWM:fa

[fol. 71]

ROBERT KENNARD WEBSTER 4-1214 ARCHITECT A.I.A.
5611 West Washington Blvd.
Los Angeles 16, California

Sept 18, 1957

Committee of Bar Examiners
State Bar of California

Gentlemen:

I feel it is a pleasure to add a vote of confidence to the character of Mr. Raphael Konigsberg.

I have known Mr. Konigsberg for several years and my association with him, particularly in his capacity with the Tobin Company, has revealed him as a man of high integrity.

I certainly trust that you will give him the consideration which I believe he justly deserves.

very truly yours,

/s/ ROBERT KENNARD
Robert Kennard

RK:ah

[fol. 72]

OLEANDER 5-8127

RICHARD H. OSHMAN
ATTORNEY AT LAW

8736 SUNSET BOULEVARD
Los Angeles 46, California

September 18, 1957

Committee of Bar Examiners of
State Bar of California
c/o Edward Mosk
Attorney at Law,
605 Yucca Street, Suite 254
Los Angeles 28, California

Re: RAPHAEL KONIGSBERG

Gentlemen:

This letter is to advise you that I have known Raphael Konigsberg for seven years. I was a classmate of his at the University of Southern California Law School, where we spent three years together, attending classes. During this time we became very well acquainted and formed a friendship which has lasted until the present time. I have been a guest in his home of various occasions and have had the pleasure of meeting his wife and children, both in his home and outside of the home.

Mr. Konigsberg and I very often studied together and discussed the legal courses which we were taking, and since the law is so embracing, our conversations and discussions frequently wandered from the field of law. During the course of our talks and for the period of our law school career, I observed that Mr. Konigsberg was the most intellectually mature person in my class. His questions, his observations, his answers and reasoning seemed to illustrate the fact that the study of law required a broad understanding of society. He brought to the study of law his varied background of teaching and social work, and his

comments upon the various courses were the most perceptive and mature. Both in and out of class he sought to find the reason and purpose for the various rules of law and their effect upon society and the individual.

His attitude in school, as well as now, was one of respect for the American system of jurisprudence, and his approach to the law is a moral one. I feel that he is one of the rare persons who feels the responsibility of society, as an individual, and that this attitude is one which would make him an excellent attorney. For these reasons I can think of no other person whom I would rather meet as an opponent in a legal matter, or as an associate, and I feel that he will be an exceptional addition to the legal profession in California.

Sincerely,

/s/ RICHARD H. OSHMAN
RICHARD H. OSHMAN

RHO:il

[fol. 73]

ELAINE B. FISCHER
ATTORNEY AT LAW
742 SOUTH HILL STREET—SUITE 268
LOS ANGELES 14, CALIFORNIA
MICHIGAN 1374

September 17, 1957

Committee of Bar Examiners
State Bar of California
Los Angeles, California

Re: Rafael Koningsberg

Gentlemen:

From the years 1950 through 1953 I attended the University of Southern California Law School with Rafael Koningsberg. I would like to tell you what I know about Rafael during this period.

He was an enthusiastic student, with a great deal of interest in the law school classes. He participated in classroom discussions when called upon to do so and I can never remember him being unprepared. I know that he studied for his classes and attended them—he wasn't the type of student that "cut" classes or took an occasional day off. Rather, he was diligent and conscientious. He never griped about homework or examinations, but instead he would tackle the job and follow it through.

Aside from the academic aspects, I know that Mr. Koningsberg was well liked by his fellow students. Being somewhat older than the average student, I remember that he was both sympathetic and concerned about their problems, and always encouraged them about the future.

It was always my feeling that Mr. Koningsberg would be a fine attorney because of the qualities mentioned hereinabove and I would welcome him as a fellow member of the Bar.

Very truly yours,

ELAINE B. FISCHEL

EBF:dt

[fol. 74]

JOSEPH GOORWITCH, M.D.

DISEASES OF THE LUNGS, BRONCHOGRAPHY, BRONCHOSCOPY

AND CHEST SURGERY

718 PROFESSIONAL BLDG.

1052 WEST SIXTH STREET

LOS ANGELES 17, CALIF.

MADISON 6-1039

September 17, 1957

Committee of Bar Examiners
State Bar of California
Los Angeles, California

Gentlemen:

I first met Mr. Raphael Konigsberg of Los Angeles about a dozen years ago when he worked as a social service worker

in a local hospital. There is no reason in my mind to doubt the high moral quality of his character. I believe Mr. Konigsberg will make a fine attorney devoted to the administration of justice for all.

Yours truly,
J. Goorwitch, M.D.

[fol. 75]

HAROLD KOPPELMAN, M. D.
6333 WILSHIRE BOULEVARD
Los ANGELES 48, CALIF.
WEBSTER 3-9163

September 17, 1957

Committee of Bar Examiners
State Bar of California
Los Angeles, California

Gentlemen:

I have known Mr. Raphael Koenigsberg for the past eight or nine years as a social worker, business man, law student, and public spirited citizen.

I have the highest regard for his intelligence, integrity, and moral character and believe that he will make an exemplary member of the Bar.

I do not hesitate to commend him to you in the highest possible terms.

Most sincerely yours,
HAROLD KOPPELMAN, M.D.

[fol. 76]

RUBINS, ROSMAN & BORAK
 CERTIFIED PUBLIC ACCOUNTANTS
 291 SOUTH LA CIENEGA BOULEVARD
 BEVERLY HILLS, CALIFORNIA

HERMAN RUBINS, C.P.A.

ELLIOT S. ROSMAN, C.P.A.

JEROME H. BORAK, C.P.A.

OLEANDER 5-7500

OLYMPIA 2-0750

September 17, 1957

Committee of Bar Examiners of
 the State Bar of California
 458 South Spring Street
 Los Angeles, California

Re: Mr. Raphael S. Konigsberg

Gentlemen:

During the last two years we have been the public accountants for The Tobin Companies where Mr. Konigsberg serves in the capacity of office manager.

During this period of time we have had occasion to work closely with Mr. Konigsberg and hence, acquired a basis for an appraisal of his character and capacity.

In our opinion Mr. Konigsberg is without question an individual of the highest moral character and unimpeachable integrity.

As individuals engaged in the practice of a profession in our state, we urgently recommend that Mr. Konigsberg be admitted to the California State Bar as we feel he will prove to be a valuable addition to the profession.

Very truly yours,

RUBINS, ROSMAN & BORAK
 Certified Public Accountants

By _____

RRB:he

[fol 77]

1427 Coronado Terrace
Los Angeles 26, California
September 18, 1957

Committee of Bar Examiners of
the State of California
Los Angeles, California

Gentlemen:

May I present the following recommendation in behalf of Mr. Raphael Konigsberg, a candidate for the Bar in this state.

I have known Mr. Konigsberg for the past ten years, not only as a member of the same community in which I reside, but have had intermittent business dealings with him as a representative of his organization, the Tobin Co., land developers and realtors, in my professional capacity as a consultant site planner and designer. In both of these areas of association I have found Mr. Konigsberg to be a constructive force representing the highest ideals and interests in behalf of the good and welfare of our community. His ethics and practices in business matters are above reproach.

Based upon the record of experience and association with Mr. Konigsberg, I would like to endorse him without reservations to become a member of the legal profession.

Sincerely yours,

Seymour A. Myerson

SAM/ve

[fol. 78] [File endorsement omitted]

L. A. No. 23266

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

RAPHAEL KONIGSBERG

v.

STATE BAR OF CALIFORNIA

ORDER GRANTING REVIEW IN STATE BAR PROCEEDING—

Gibson, C.J., did not participate herein.

Let a writ of review issue, to be heard at the Los Angeles, January, 1959, calendar. The record of the State Bar hearings shall constitute a return thereto.

[File endorsement omitted]

SHESK

Acting Chief Justice

[fol. 79]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

ORDER CONTINUING THE MATTER FOR ORAL ARGUMENT—

January 14, 1959

[Title omitted]

Matter called. Chief Justice Gibson stated that he would not participate in this matter. Edward Mosk appeared for petitioner. Frank B. Belcher appeared for respondents. Mr. Mosk stated that he desired the presence at oral argument of all justices who will participate in the disposition of this matter. Acting Chief Justice Carter stated that the matter is therefore continued to the Los Angeles, April 1959, calendar.

[fol. 80]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[L. A. No. 23266. In Bank.]

Raphael Konigsberg, Petitioner, v. The State Bar
of California et al., Respondents.

- [1] Attorneys—Admission to Bar—Eligibility—Loyalty to Government.—An applicant's persistent refusal to answer questions put to him by the Committee of Bar Examiners concerning either past or present membership in or affiliation with the Communist Party after being warned that such conduct would require denial of his certification to admission to practice justified the committee in refusing to certify him where, in view of Bus. & Prof. Code, § 6064.1, enjoining the committee against certifying for admission to practice any person who "advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means," which clearly requires the committee to inquire as to such advocacy, and the fact that Congress (68 Stat. 775; 50 U.S.C. § 841) and the state Legislature (Gov. Code, § 1027.5) have declared that the Communist Party advocates such overthrow, the inquiry as to membership in that party was relevant and material in determining whether the proscribed advocacy existed.

Proceeding to review action of the Committee of Bar Examiners in refusing to certify petitioner for admission to practice law and application to the Supreme Court for admission to practice. Petition for review denied; application to Supreme Court denied.

Edward Mosk for Petitioner.

A. L. Wirin, Fred Okrand and Hugh R. Manes as Amici Curiae on Behalf of Petitioner.

Frank B. Belcher, Robert D. Burch and Ralph E. Lewis for Respondents.

[1] See C.J.Jur.2d, Attorneys at Law, § 38.
McK. Dig. Reference: [1] Attorneys, § 15.1.

[fol. 81] OPINION—October 16, 1959

The Court.—Petitioner seeks review of the action of the Committee of Bar Examiners in refusing to certify him to this court for admission to practice law in California. Also, he has applied directly to this court for admission to practice.

The Committee of Bar Examiners is established by the Board of Governors of The State Bar of California pursuant to statutory authority. It conducts the bar examinations and certifies directly to this court those applicants for admission who fulfill the requirements of the code (Bus. & Prof. Code, § 6046). This court may admit to practice any applicant so certified (Bus. & Prof. Code, § 6064). An applicant who is refused certification may have the action of the committee reviewed by this court (Bus. & Prof. Code, § 6066).

The code specifically provides (§ 6064.1) that “[n]o person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified . . . for admission . . .”

In October, 1953, petitioner took and passed the written bar examination. Shortly before that examination, and on several later occasions, hearings were conducted by a subcommittee and the full Committee of Bar Examiners.

An ex-Communist testified that petitioner had attended meetings of a Communist Party unit in 1941. Petitioner offered much evidence of his satisfactory service in the Army during World War II, and of his good character and loyalty. The evidence of these hearings is reviewed in some detail in the several opinions in *Königsberg v. State Bar*, 353 U.S. 252 [77 S.Ct. 722, 1 L.Ed.2d 810]. Petitioner denied that he advocated overthrow of the government, but refused to answer any questions of committee members as to his membership in the Communist Party, asserting that such inquiries infringed rights guaranteed him by the First and Fourteenth Amendments to the Constitution of the United States.

The committee, by letter of May 17, 1954, advised petitioner that his application was denied on grounds that he had not sustained his burden of establishing that he (1)

possessed the good moral character required by section 6060, subdivision (c), of the code, or (2) did not advocate unlawful overthrow of the government, the showing required by section 6064.1.

Petitioner thereupon sought review by this court. His petition was denied April 20, 1955, without opinion, by a divided court. The United States Supreme Court granted certiorari. On May 6, 1957, that court, with three justices dissenting and one not participating, reversed and remanded [fol. 82] the matter to this court "for further proceedings not inconsistent with this opinion" (*Konigsberg v. State Bar, supra*, 353 U.S. 252).

In doing so, the United States Supreme Court held (p. 273) that "there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government."

That court specifically pointed out (p. 259) that Konigsberg "was not denied admission to the California Bar simply because he refused to answer questions," and noted that he had not been told that he would be barred "just because he refused to answer relevant inquiries or because he was obstructing the Committee." In this connection it was said (p. 261) that "Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone...."

The court stated (353 U.S. at pp. 261-262) that "If it were possible for us to say that the . . . [committee] had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the . . . [committee] itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have

to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him."

Following the remand, this court vacated its prior order denying the petition for review and referred the entire matter, including the application for admission to the bar filed with us by petitioner after the decision of the United States Supreme Court, to the Committee of Bar Examiners for further proceedings. The committee conducted a hearing September 21, 1957.

At this hearing, the records of all previous hearings were incorporated by stipulation, as part of the record, petitioner and a witness called by him were examined, and petitioner introduced letters recommending him as to character and loyalty. No evidence additional to that received [fol. 83] in the 1953-1954 hearings was offered as reflecting on petitioner's loyalty or to show his advocacy of overthrow of the government. Thus a finding that he was not of good moral character or that he advocated overthrow of the government would be inconsistent with the decision of the United States Supreme Court upon the previous record.

At the 1957 hearing, however, the committee did fully advise petitioner and his counsel that his refusal to answer material questions put to him by it would obstruct its investigation of his qualifications to practice law, with the result that the committee would not be able to certify him for admission. It was made clear to Miss that questions concerning membership in the Communist Party were deemed material. Nonetheless, petitioner refused to answer any and all questions put to him by the committee concerning either past or present membership in or affiliation with the Communist Party. The committee then found that Konigsberg had refused to answer its questions as to his membership in or affiliation with the Communist Party, that these questions were material to a proper determination of his qualifications, that his refusal to answer had obstructed the investigation which the statute requires, and that because of this refusal the committee is unable to certify him for admission.

It is this action which petitioner seeks to have reviewed. It differs materially from that of 1954. The committee action now before us contains no findings or conclusion that petitioner had failed to establish either his good moral character or his abstention from advocacy of overthrow of the government.

[1] Here it is the refusal to answer material questions which is the basis for denial of certification. Petitioner's refusal to answer is conceded. The issue is whether the questions are material. We think their materiality is clear. The committee is enjoined against certifying for admission to practice any person who "advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means." (Bus. & Prof. Code, § 6064.1.) This provision clearly requires the committee to inquire as to such advocacy. The Congress (68 Stat. 775; 50 U.S.C. § 841) and the California Legislature (Gov. Code, § 1027.5) have declared that the Communist Party does advocate such overthrow. It follows that inquiry as to membership in that party is relevant and material in determining whether the proscribed advocacy exists. Petitioner refused to answer questions as to such membership at periods after the statutory proscription and after the [fol. 84] legislative declarations of the purpose of the Communist Party. As we have noted, he persisted in his refusal after being warned that such conduct would be deemed to require denial of his certification by the committee.

We are unable to distinguish this situation from that presented in *Beilan v. Board of Public Education*, 357 U.S. 399 [78 S.Ct. 1317, 1324, 2 L.Ed.2d 1414, 1433]. There a school teacher refused to answer questions as to his loyalty. This refusal was made the basis for a finding of "incompetency." There, as here, there was no finding that the individual was in fact disloyal, but merely a finding that his refusal to answer questions pertinent to his loyalty revealed a lack of candor which constituted unfitness. Our case is somewhat stronger in that here a statute specifically requires the committee to certify that petitioner does not advocate overthrow of the government, and the question as to party membership bears upon that issue. In *Beilan*, as here, there was no rule specifically providing that the

failure to answer would be deemed ground for adverse action, but here, as there, the investigating authority gave clear warning that such a result would follow.

In its previous decision in this case, the United States Supreme Court held only that the evidence was insufficient to sustain a finding that petitioner is not of good moral character. The present record contains no additional evidence on that subject. However, the refusal to certify for admission is, on the present record, based wholly upon his refusal to answer pertinent questions. This ground was specifically left open in the earlier decision of that court and subsequent decisions have recognized this fact. (*Beilan v. Board of Public Education, supra*, p. 409; *Lerner v. Casey*, 357 U.S. 468, 478 [78 S.Ct. 1311, 1324, 2 L.Ed.2d 1423, 1433].)

Determination whether petitioner was a member of the party which has been legislatively determined to advocate overthrow of the government was blocked by his refusal to answer. Such refusal likewise effectively prevented the committee from reaching the question whether, if he were such a member, his membership was knowing or innocent. The committee's refusal to recommend him for admission was based upon his refusal to answer inquiries about his relevant activities—not upon those activities themselves. Thus its refusal is fully justified under the rule of *Beilan*, which disposes of his claim that his constitutional rights have been infringed.

Petitioner does not question the constitutionality of the code section which prohibits certification of one who advocates unlawful overthrow of the government, nor of the federal and state legislative declarations that the Communist Party seeks such overthrow. Implicit in the statutory provision for review of the committee's refusal to certify an applicant is the power of this court to admit one not so certified. But to admit applicants who refuse to answer the committee's questions upon these subjects would nullify the concededly valid legislative direction to the committee. Such a rule would effectively stifle committee inquiry upon issues legislatively declared to be relevant to that issue. We cannot in good conscience deny the committee the right to inquire into a matter as to which

it must certify. Whether the members of this court consider such a statute effective, practical or wise is irrelevant. We do not act in a legislative capacity. Rather, we recognize and enforce legislation which is valid.

We adopt and approve the findings of the committee stated in the 1957 report. The petition for review and the application for admission to the bar are denied.

Gibson, C. J., deeming himself disqualified, did not participate.

Draper, J., sat pro tempore in place of the Chief Justice.

White, J., not having been a member of the court at the time of oral argument, did not participate.

TRAYNOR, Acting P. J. —I dissent.

The United States Supreme Court has determined that Konigsberg was denied due process of law and equal protection of the laws on the ground that "the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application for admission to the California Bar." (*Konigsberg v. State Bar*, 353 U.S. 252, 262, [77 S.Ct. 722, 1 L.Ed.2d 810].) In its words, "there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forcible overthrow of the Government. Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law." (353 U.S. at 273.)

It declined to determine whether Konigsberg could be [fol. 86] excluded from practice solely because of his refusal to answer questions, stating:

"There is nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, that suggests that failure to answer a Bar Examiner's inquiry is, *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character, or loyalty or how flimsy are the suggestions of the Bar

Examiners. Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone, even though his moral character and loyalty were unimpeachable, and then giving him a chance to comply. In our opinion, there is nothing in the record which indicates that the Committee, in a matter of such grave importance to Konigsberg, applied a brand new exclusionary rule to his application—all without telling him that it was doing so.

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our refraining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him." (353 U.S. at 260, 262, footnotes omitted.)

The United States Supreme Court reversed the judgment of this court and remanded the case "for further proceedings not inconsistent with this opinion." (353 U.S. at 274.) In view of the questions expressly left undecided and the court's remand, it is my opinion that this court is not foreclosed by the United States Supreme Court's decision in this case from adopting and applying to Konigsberg a rule making failure to answer relevant questions with respect to his qualifications an independent ground for exclusion.

[fol. 87] An applicant ordinarily has the burden of establishing his qualifications to practice law, and if he refuses to answer questions relevant to his qualifications, it is my opinion that this court is justified in denying him admission.

Given the congressional and state legislative findings with regard to the Communist Party and the adjudications of guilt of its leaders of criminal advocacy, a question as to present or past membership in that party is relevant to the issue of possible criminal advocacy and hence to the applicant's qualifications.

Whatever its relevancy in a particular context, however, it is an extraordinary variant of the usual inquiry into crime, for the attendant burden of proof upon any one under question poses the immediate threat of prior restraint upon the free speech of all applicants. The possibility of inquiry into their speech, the heavy burden upon them to establish its innocence, and the evil repercussions of inquiry despite innocence, would constrain them to speak their minds so non-committally that no one could ever mistake their innocuous words for advocacy. This grave danger to freedom of speech could be averted without loss to legitimate investigation by shifting the burden to the examiners. Confronted with a *prima facie* case, an applicant would then be obliged to rebut it.

Such a procedure is logically dictated by *Speiser v. Randall*, 357 U.S. 513 [78 S.Ct. 1332, 1352, 2 L.Ed.2d 1460]. The court there assumed that the state could deny a tax exemption to one whose advocacy of the unlawful overthrow of the government was such that it could be punished as a crime. Mindful of the risks to free speech, however, it took care to hold that the state could not compel the taxpayer to prove his right to an exemption and that therefore an oath as to his innocence of unlawful advocacy could not be required. There may be differences of degree in the public interest in the fitness of the applicants for tax exemption and for admission to the Bar. Even though the state may have more at stake in the latter situation, it is not therefore freer to endanger free speech needlessly.

Inquiry on the issue of advocacy of the unlawful overthrow of the government is a greedy camel; it does not easily take its leave. It has a way of moving on into the domain of lawful economic and political belief, speech, and activity. It bears noting that such advocacy, whether it carries criminal or civil sanctions, is unlike crimes whose elements readily set them apart from legitimate activity. (*Cf.*

Dennis v. United States, 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. [fol. 88] 1137], with *Yates v. United States*, 354 U.S. 298 [77 S.Ct. 1064, 1 L.Ed.2d 1356].) It also bears noting that such advocacy is not invariably associated with even active membership in the Communist Party. (*Yates v. United States*; *supra*.)

Such considerations as these may have led to the result in *Speiser v. Randall*, *supra*, 357 U.S. 513. In contrast an applicant for public employment can be required to state whether or not he is or was a member of the Communist Party, as a condition of his employment. (*Lerner v. Casey*, 357 U.S. 468 [78 S.Ct. 1311, 2 L.Ed.2d 1423]; *Beilan v. Board of Public Education*, 357 U.S. 399 [78 S.Ct. 1317, 1324, 2 L.Ed.2d 1414, 1433]; *Steinmetz v. California State Board of Education*, 44 Cal.2d 816, §23 [285 P.2d 617]; *Pockman v. Leonard*, 39 Cal.2d 676, 65-687 [249 P.2d 267].) Since an attorney is neither a public employee nor a taxpayer seeking an exemption, we do not know how the United States Supreme Court would resolve the constitutional issue here. Still, it has emphasized the importance of an independent Bar, and it has declared that petitioner's insistence on a constitutional right not to answer the questions here involved was not frivolous. (*Konigsberg v. State Bar*, 353 U.S. 252, 270, 273 [77 S.Ct. 722, 1 L.Ed.2d 810].)

We need not resolve the constitutional question, for the Legislature has not directed that section 6064.1 of the Business and Professions Code^{*} be enforced by compelling applicants to answer all questions relevant to the proscribed advocacy, and significantly, it has not required declarations of nonadvocacy from members of the Bar. It rests solely with this court, in its supervision of admissions to the Bar, to determine whether petitioner must answer the questions in issue. The question is not whether the Legislature might constitutionally impose such requirements but whether this court should impose them. There is no good reason for the court to do so, particularly when the Legislature has made no attempt to impose them on practicing attorneys.

* "No person who advocates the overthrow of the Government of the United States or of this State by force; violence, or other unconstitutional means, shall be certified to, the Supreme Court for admission and a license to practice law."

The United States Supreme Court has determined that Konigsberg established his good moral character and that he did not advocate unlawful overthrow of the government. In the subsequent hearing there was no additional evidence adverse to Konigsberg. The committee did no more than make clear to him that his failure to answer would be an [fol. 89] independent ground for not certifying him to this court. Konigsberg chose to stand on his constitutional objections, and as the United States Supreme Court pointed out, there is "nothing in the record which indicates that his position was not taken in good faith." (353 U.S. at 270.) If the committee had evidence that would support a finding of unlawful advocacy, it could compel Konigsberg to disclose political statements and associations in rebuttal or forego admission to the Bar. As the United States Supreme Court held, the committee made no *prima facie* case against Konigsberg, and we are bound by that finding. I would therefore grant the petition of Konigsberg and admit him to the Bar of this state.

PETERS, J.—I dissent.

The majority opinion disregards the law of this case as already established by the United States Supreme Court. (*Konigsberg v. State Bar*, 353 U.S. 252 [77 S.Ct. 722, 11 L.Ed. 2d 810].) It misconstrues the high court's opinion, and in particular misconstrues the legal effect of the order of that court remanding the case "for further proceedings not inconsistent with this opinion." (*Konigsberg v. State Bar*, 353 U.S. at p. 274.) The result is that, in my opinion, applicant has been denied due process and equal protection.

The only issues before The State Bar in its first proceeding were whether the applicant was of good moral character and whether he advocated the forceful overthrow of the government of the United States. The burden was upon applicant to establish those facts; Lengthy hearings were held. At these hearings applicant furnished overwhelming evidence of his good moral character and of the fact that he did not advocate and had never advocated the forceful overthrow of the government. He refused to answer any question as to his political affiliations. The State Bar refused to certify

the applicant for admission on the ground that he had failed to sustain his burden on the two issues involved. The applicant sought review by this court. The petition was denied without opinion. The United States Supreme Court granted certiorari. That court then reversed this court and The State Bar and held that the applicant had sustained his burden of proof on the two key issues, and that on the showing made the applicant should have been certified for admission. The case was remanded "for further proceedings not inconsistent with this opinion." (*Königsberg v. State Bar*, 353 U.S. at p. 274.)

[fol. 90] Following this remand this court, by a divided vote, instead of certifying the applicant, vacated its prior order and referred the case back to The State Bar for further proceedings. No showing was then or later made that any new evidence or facts had been discovered. The State Bar then held a so-called hearing. It was stipulated that the entire prior record should be introduced. The State Bar had admittedly hired an investigator to check on the applicant while the case had been pending in the courts, but it did not produce him or offer any evidence at all. The petitioner produced additional evidence in further support of his contentions that he was of good moral character and a loyal citizen. No question was asked him that had not been asked on the prior hearing, and no answer was given that had not already been given. The only difference between the two hearings was that at the last one petitioner was warned that his failure to answer questions as to his political affiliations could be construed as lack of cooperation that would justify a denial of his application.

Thus petitioner, in the first hearing, presented overwhelming evidence that he was of good moral character and a loyal citizen. The highest court in the land so held. Then, precisely that same record, the record that the high court had held demonstrated that the applicant had sustained his burden as a matter of law, the majority of this court have held that The State Bar properly denied certification because this time applicant was warned that the failure to answer certain questions would be construed as lack of cooperation. How many times does the issue of whether applicant possesses a good moral character and is a loyal citi-

zen have to be tried? Those were the issues presented. Having sustained his burden as to those issues, on what rational theory can it be held that The State Bar, at this late date, with no new evidence, can offer a new and different excuse for denying certification? When does this litigation come to an end? I had always thought, until I read the majority opinion in this case, that our system of law was predicated on the fundamental theory that, when issues between litigants have once been determined, they cannot be relitigated. I had always thought that litigants were required to raise all relevant issues in one proceeding. I had assumed that parties cannot litigate their case piecemeal.

The majority purport to find sanction for this violation of fundamental principles in the order of the United States Supreme Court, heretofore quoted, remanding the case "for [fol. 91] further proceedings not inconsistent with this opinion" (*Konigsberg v. State Bar*, 353 U.S. at p. 274), and in several sentences contained in the opinion. The majority do not quote all the relevant language. At page 259 of the high court opinion appears the following:

"In Konigsberg's petition for review to the State Supreme Court there is no suggestion that the Committee had excluded him merely for failing to respond to its inquiries. Nor did the Committee in its answer indicate that this was the basis for its action." After responding to Konigsberg's allegations, the Bar Committee set forth a defense of its action which in substance repeated the reasons it had given Konigsberg in the formal notice of denial for rejecting his application.

"There is nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, [and there is still nothing in such statutes, decisions or rules] that suggests that failure to answer a Bar Examiner's inquiry is *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the Bar Examiners. Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg

simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone; even though his moral character and loyalty were unimpeachable, and then giving him a chance to comply. In our opinion, there is nothing in the record which indicates that the Committee, in a matter of such grave importance to Königsberg, applied a brand new exclusionary rule to his application—all without telling him that it was doing so.

"If it were possible for us to say that the Board had barred Königsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Königsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Königsberg's refusal to answer [fol. 92] the particular questions asked him."

The majority opinion interprets the remanding order and the above-quoted portion of the opinion as a direction, or at least an authorization, to return the proceeding to The State Bar to permit it to refuse certification solely on the ground that Königsberg had refused to cooperate by refusing to answer questions about his political affiliations. This is not a correct interpretation of the remanding order. Obviously, what the Supreme Court meant by the quotation, *supra*, is that California has never adopted a statute or a rule making failure to answer *ipso facto*, a ground for refusal to certify, and that The State Bar could not properly contend that on the record there involved such was a valid ground for refusal to certify. Without such a statute or rule the point could not be urged. Certainly the Supreme Court could not have meant that without a statute or rule the Board of Bar

Examiners could create a "rule" simply by warning Konigsberg that the effect of refusal to answer would be to cause the board to refuse his certification. Such a warning, coming four years after Konigsberg first appeared before the committee, does not comply with rules of "elemental fairness" as required by the Supreme Court of the United States.

Rules for admission to practice law are not to be adopted in this cavalier fashion. The only rules passed by the Legislature provide that the applicant must be of good moral character, and must not advocate the forceful overthrow. There is no rule about failing to answer. If California is to adopt a new rule relating to failure to answer questions, such rule or statute should be adopted in the manner rules and statutes are normally adopted. Here the so-called "rule" was adopted in the middle of a proceeding as an afterthought simply to justify the actions of the Bar Committee in refusing to certify Konigsberg for admission. To sanction such a procedure is not only unfair but, in my opinion, a denial of due process and equal protection.

After the careful review of the evidence made by the United States Supreme Court, and after holding that such evidence did not justify the refusal to certify, when the high court remanded the case "for further proceedings not inconsistent with this opinion" it meant, and must have meant, that this court was to grant the petition of Konigsberg, unless new facts relating to character or loyalty were produced. Any other action was necessarily inconsistent with the opinion of the Supreme Court of the United States.

[fo. 93] Of course, had The State Bar made a showing that after the first hearings and while the case was on appeal it had discovered new evidence that Konigsberg was not of good moral character and not a loyal citizen, the case could have been remanded to The State Bar to hear and consider that evidence. But no such showing was made and no such evidence produced.

Thus the majority opinion, in my view, violates the remand order of the United States Supreme Court.

In addition, the majority opinion also violates the law of the case as established by the high court. As already pointed out, all of the questions Konigsberg refused to answer were addressed to the inquiry as to whether he was or had been a

member of the Communist Party. The only legitimate purpose behind those questions was to ascertain whether Konigsberg advocated or had ever advocated the forceful overthrow of the government of the United States. Konigsberg answered, and answered frankly, every question directed to that subject. The State Bar produced no evidence to the contrary. In discussing the answers given by Konigsberg, the United States Supreme Court (*Konigsberg v. State Bar*, 353 U.S. 252, at p. 271) had this to say: "Konigsberg repeatedly testified under oath before the Committee [and he gave similar answers at the last hearing] that he did not believe in nor advocate the overthrow of any government in this country by any unconstitutional means. For example, in response to one question as to whether he advocated overthrowing the Government, he emphatically declared: 'I answer specifically I do not, I never did or never will.' No witness testified to the contrary. As a matter of fact, many of the witnesses gave testimony which was utterly inconsistent with the premise that he was disloyal. And Konigsberg told the Committee that he was ready at any time to take an oath to uphold the Constitution of the United States and the Constitution of California."¹

There is no evidence that Konigsberg now or at any other time has ever advocated the forceful overthrow, or ever belonged to any association that he knew so advocated. The evidence is all to the contrary. The United States Supreme Court after reviewing the evidence then before it, and no other evidence has been produced on the issue, had this to say (*Konigsberg v. State Bar*, 353 U.S. 252, at p. 273): "We recognize the importance of leaving States free to select [fol. 94] their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and

¹ This is the oath required by California law—Business and Professions Code, section 6067.

act as members of an Independent Bar. In this case we are compelled to conclude that there is *no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government.* [Italics added.] Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. As we said before, the mere fact of Konigsberg's past membership in the Communist Party, if true, without anything more, is not an adequate basis for concluding that he is disloyal or a person of bad character. A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."

It must be remembered that at the various hearings Konigsberg produced evidence of 54 persons who testified in detail about almost every phase of his adult life. Not one word or one bit of evidence was produced to show that Konigsberg had ever committed a wrongful, improper or disloyal act. The evidence was all to the contrary. Applicant himself testified that he did not and never had advocated the forceful overthrow. The United States Supreme Court was much impressed by this testimony. An examination of that court's opinion will demonstrate to a certainty that it held that, on the record before it, and the present record is stronger in this respect, Konigsberg had affirmatively demonstrated that he possessed a good moral character and was a loyal citizen. This is the law of this case.

The high court stated that the issue before it was "Does the evidence in the record support any reasonable doubts about Konigsberg's good character or his loyalty to the Governments of the State and Nation? . . .

"Konigsberg claims that he established his good moral character by overwhelming evidence and carried the burden of proving that he does not advocate overthrow of the Gov- [fol. 95] ernment. He contends here, as he did in the California court, that there is no evidence in the record which rationally supports a finding of doubt about his character

or loyalty. . . . If this is true, California's refusal to admit him is a denial of due process and of equal protection of the laws because both arbitrary and discriminatory. After examination of the record, we are compelled to agree with Konigsberg that the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application . . ." (353 U.S. at p. 262.).

Then, after referring to the evidence produced by Konigsberg on the issue of his character, the court stated (353 U.S. at p. 265): "Other witnesses testified to Konigsberg's belief in democracy and devotion to democratic ideas, his principled convictions, his honesty and integrity, his conscientiousness and competence in his work, his concern and affection for his wife and children and his loyalty to the country. These, of course, have traditionally been the kind of qualities that make up good moral character. The significance of the statements made by these witnesses about Konigsberg is enhanced by the fact that they had known him as an adult while he was employed in responsible professional positions. Even more significant, not a single person has testified that Konigsberg's moral character was bad or questionable in any way."

After referring to evidence of Konigsberg's background the court refers to this evidence of character as "Konigsberg's forceful showing of good moral character" and comments on the fact that "there is no evidence that he has ever been convicted of any crime or has ever done anything base or depraved" the high court refers to certain arguments of The State Bar and concludes "When these items are analyzed, we believe it cannot rationally be said that they support substantial doubts about Konigsberg's moral fitness to practice law." (353 U.S. at p. 266.) This is the law of this case.

Then, after analyzing all the evidence on this issue relied upon by The State Bar, the court stated: "On the record before us, it is our judgment that the inferences of bad moral character which the Committee attempted to draw from Konigsberg's refusal to answer questions about his political affiliations and opinions are unwarranted." (353 U.S. at p. 270.)

After discussing at length the evidence that The State Bar relied upon to show possible advocacy of forceful overthrow, the United States Supreme Court concluded with the statement already quoted but which bears repetition: "In this [fol. 96] case we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government.... It is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law.... A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action." (353 U.S. at p. 273.) This, too, is the law of this case.

Thus it is the law of this case that the record before the Supreme Court of the United States established, as a matter of law, that applicant, without conflict, proved that he possessed a good moral character and was a loyal citizen. The present record is even stronger in this respect. If it be taken as established as a matter of law that applicant possesses such a character and is loyal, the two statutory requirements involved, of what relevancy is it that he refused to answer questions as to his political affiliations? The holding that mere refusal to answer the questions justified refusing certification, under the circumstances here, necessarily violates the law of the case as established by the high court.

Stated another way, if the record before the high court established these facts as a matter of law, the record now before this court also, necessarily, shows these facts as a matter of law. Therefore, it is a necessary conclusion from the majority opinion that although Konigsberg affirmatively sustained the burden of showing by very substantial and uncontradicted evidence that he possesses a good moral character and is a loyal citizen, and although the record will support no other conclusion, he may be denied admission solely because he refused to cooperate by answering questions about his political affiliations. Thus, although the petitioner has affirmatively sustained his burden of proof, and there is no evidence or inference from the evidence to the contrary,

the majority hold that he may be denied relief solely because he refused to answer questions as to his political affiliations.

For these reasons, and also for the reasons stated in the dissenting opinion of Mr. Justice Traynor, I would grant the petition of Konigsberg and admit him to the bar of this state.

[fol. 97.]

Order Due
November 13, 1959

L.A. No. 23266

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK**

KONIGSBERG

—v.—

THE STATE BAR OF CALIFORNIA

Gibson, C.J., deeming himself disqualified did not participate.

Draper, J., sat pro tempore in place of the Chief Justice.

ORDER DENYING REHEARING

Petition for rehearing Denied.

Traynor, Acting C.J. and Peters, J. are of the opinion that the petition should be granted.

Traynor, Acting Chief Justice.

Filed

Nov 10, 1959

William F. Sullivan, Clerk

By: R. J. Bell

S. F. Deputy

[fol. 97a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 98]

SUPREME COURT OF THE UNITED STATES

No. 661, October Term, 1959

RAPHAEL KONIGSBERG, Petitioner,

—v.—

STATE BAR OF CALIFORNIA, et al.

ORDER GRANTING MOTION TO USE RECORD IN NO. 5,
OCTOBER TERM, 1956—March 7, 1960

On Consideration of the motion to use record in No. 5,
October Term, 1956, in this case,

It Is Ordered by this Court that the said motion be, and
the same is hereby, granted.

[fol. 99]

SUPREME COURT OF THE UNITED STATES

No. 661, October Term, 1959

[Title omitted]

ORDER ALLOWING CERTIORARI—March 7, 1960

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 73]

[File endorsement omitted]

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

L. A. No. 23266

RAFAEL KÖNIGSBERG, Petitioner,

vs.

STATE BAR OF CALIFORNIA and the Committee of Bar
Examiners of the State Bar of California, Respondents.REPORT OF THE COMMITTEE OF BAR EXAMINERS—
Filed November 19, 1957

To the Honorable Phil S. Gibson, Chief Justice, and to the
Honorable Associate Justices of the Supreme Court of
the State of California:

I.

On July 10, 1957, the following order was made in the
above entitled matter:

"Pursuant to mandate of the Supreme Court of the
United States, it is ordered that the decision of this
Court, filed April 20, 1955, be vacated, and the matter
of admitting Raphael Konigsberg to the practice of
law in all the courts of this State is referred to the
Committee of Bar Examiners for further proceedings.

"CARTER, J. is of the opinion that the application of
Raphael Konigsberg for admission to practice law in
all of the courts of this State should now be granted.

(s) GIBSON, Chief Justice."

II.

Pursuant to this order, the following action was taken by
the Committee of Bar Examiners in the matter of the appli-
[fol. 74] cation of Raphael Konigsberg for admission to
practice law in the State of California:

(1) The Committee carefully considered the opinion of the Supreme Court of the United States in the matter entitled "Raphael Konigsberg, Petitioner, vs. State Bar of California and Committee of Bar Examiners of the State Bar of California", decided May 6, 1957, 353 US —, 1 L ed 2d 810, 77 S Ct —.

(2) On September 21, 1957, at a meeting of the Committee in Los Angeles, at which all of the members of the Committee were present, the applicant appeared with his attorney, Edward Mosk, Esq. At this meeting the applicant's petition for admission was further heard by the Committee. An argument by the attorney for the applicant in support of the application for admission was also heard. The applicant was sworn and testified at the hearing. A witness produced by the applicant was sworn and testified. Written evidence was offered by the applicant, and was received by the Committee. The written record of all previous hearings by the Committee and one of its subcommittees on the application of Raphael Konigsberg for admission was incorporated as part of the record of the further hearing, by the stipulation of the applicant and by the Committee.

(3) The application was then submitted by the applicant and by his attorney.

III.

At the hearing on September 21, 1957, the Committee advised the applicant and his attorney that the refusal of [fol. 75] applicant to answer material questions put to him by the Committee would obstruct the investigation by the Committee of applicant's qualifications for admission to practice law, with the result that the Committee would not be able to certify him for admission.

IV.

At the hearing on September 21, 1957, applicant refused to answer any questions put to him by the Committee concerning his past or present membership in or affiliation with the Communist Party.

V:

After further consideration of the entire record before it, the Committee finds and concludes:

- (1) That the questions put to the applicant by the Committee concerning past or present membership in or affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California.
- (2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California.
- (3) That the refusal of applicant to answer said questions has obstructed a necessary and proper function of the Committee under Section 6046 and related sections of the Business & Professions Code of the State of California and under the Rules Regulating Admission to Practice Law in California adopted pursuant to Section 6047 and related sections of said Code.
- [fol. 76] (4) That in view of the foregoing, the Committee is unable to certify that applicant possesses the requisite qualifications or has fulfilled the requirements for admission to practice law in the State of California.

In Witness Whereof, the Committee of Bar Examiners of the State Bar of California respectfully submits this report of its proceedings on the reference made to it by the Supreme Court of the State of California on July 10, 1957, together with the transcript of the hearing before the Committee on September 21, 1957, and the exhibits submitted by the applicant at that hearing.

Dated: November 9, 1957.

Sharp Whitmore, Vincent H. O'Donnell, George Harpagel, Jr., Forrest E. Macomber, Gerald P. Martin, Thomas H. McGovern, John B. Surr, The Committee of Bar Examiners of the State Bar of California, By Sharp Whitmore, Chairman.

Clerk's Certificate to foregoing paper (omitted in printing).